



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

SUCCESSION CAUSE NO.42 OF 2005

IN THE MATTER OF THE ESTATE OF STANLEY MUKIGI MANYIGI (DECEASED)

ELIZABETH NJERI KARANJA.....APPLICANT

VERSUS

**JIMMY MANYIGI MUKIGI.....
ADMINISTRATOR**

RULING

Stanley Mukigi Manyigi, the deceased to whose estate these proceedings relate died on 14th November 2000. On 7th January 2005, Elizabeth Njeri Karanja, Jimmy Manyigi Mukigi, Timothy Mwangi Mukigi and Margaret Wanjiku Mwangi (the petitioners) petitioned this court to be issued with a grant of letters of administration intestate to enable them administer the estate of the deceased. All dependants of the deceased executed consent granting permission for the above to so petition the court. The four (4) are children of the deceased. On 5th November 2007, the petitioners made an application for the grant that was issued to them to be confirmed. They made proposal on how they intended the properties that comprised the estate of the deceased to be distributed. Of particular interest to this application is the agreement between the beneficiaries that the parcel of land known as LR. No. Loc 7/Gakoigo/3148 (hereinafter referred to as the suit parcel of land) measuring eight (8) acres or thereabout was to be distributed equally to the four (4) daughters of the deceased namely Elizabeth Njeri Karanja, Margaret Wanjiku Mwangi, Ann Muthoni Kamithi and Jane Wangari Muteru. The house on the above parcel of land together with surrounding compound measuring 0.8 acres was to be inherited by John Mukigi. Part of that land was also to constitute the common burial ground for deceased's family members. The grant was confirmed on 18th May 2011. The grant was also rectified on the same date whereby Timothy Mwangi Mukigi was removed as an administrator of the estate of the deceased. This is because the said Timothy Mwangi Mukigi died on 30th November 2007 before the grant was confirmed.

A dispute arose between the applicant (representing the daughters of the deceased) and the respondent. The applicant complained that the respondent had refused to execute the necessary documents to facilitate the subdivision and the transfer of the portion of the suit parcels of land that was to be inherited by the four (4) daughters. The applicant requested the court to allow the Deputy Registrar of this court to execute the said transfer documents on behalf of the respondent. The reason for the refusal became apparent when the respondent filed a replying affidavit to the application. The respondent deponed that although it was indicated that the four (4) daughters would inherit the said portion of land, the actual agreement between the family members was that;

- a. A part of the suit parcel of land was to be retained as common burial grounds, access roads with enough parking space for family and visitors.

- b. The residential house and its compound within the suit parcel of land was to be allocated to their last born son, John Mukigi.
- c. That in the event any of the daughters (who are all married) is to be divorced, then she will be shown an area within the suit parcel of land to settle.

In the premises therefore, it was the respondent's case that the applicant and his sisters had no reason whatsoever to crave for the subdivision and distribution of the suit parcel of land as proposed in the certificate of confirmation of grant.

The application was argued before Njagi J. He is no longer in the Family Division. The parties to the application agreed that the court writes its Ruling on the basis of proceedings of Njagi J. This court has carefully considered the facts of this case. There is no dispute that the beneficiaries of the estate of the deceased had agreed on how the properties that comprised the estate of the deceased were to be distributed. There is no dispute in regard to the distribution of all the other properties save for the suit parcel of land. All beneficiaries, including the respondent agreed that the four (4) named daughters of the deceased would each inherit two (2) acres out of the suit parcel of land. The certificate of confirmation of grant issued by this court is clear in that regard on how the four daughters namely Elizabeth Njeri Karanja, Margaret Wanjiku Mwangi, Ann Muthoni Kamithi and Jane Wangari Muteru were each to inherit two (2) acres from the suit parcel of land. The dispute that has now arisen is that the respondent does not want the suit parcel of land distributed in accordance with the certificate of confirmation of grant. He appears to have changed his mind. It is now his case that it was never the initial family agreement that married daughters of the deceased benefit from the suit parcel of land. For this, the respondent has invoked the name of the deceased. According to him, what he has stated in response to the application were the wishes of the deceased.

This court does not agree with the position taken by the respondent. **Section 38** of the **Law of Succession Act** is clear on how the properties that comprise the estate of the deceased are to be distributed among the dependants. It provides as follows:

“Where an intestate has left a surviving child or children but no spouse, the net intestate estate shall, subject to the provisions of sections 41 and 42, devolve upon the surviving child, if there be one, or be equally divided among the surviving children.”

Section 29 of the **Law of Succession Act** defines who a dependant is. It includes children of the deceased. It does not discriminate between sons and daughters, whether married or unmarried. For the respondent to argue that the married daughters would only be entitled to benefit from the estate of their deceased father if they are divorced or separated is not only preposterous and immoral but also contrary to the law. The married daughters of the deceased have an equal right to inherit from the estate of their deceased father in a similar manner to the sons. This court finds no merit with the objection raised by the respondent.

The respondent is ordered to execute all documents so as to facilitate the subdivision and transfer of the portions that are to be inherited by the four (4) named daughters of the deceased in accordance with the certificate of confirmation of grant. He is required to do so within thirty (30) days of the date of this Ruling or in default thereof, the applicant shall be at liberty to file an appropriate application before this court for the removal of the respondent as a co-administrator of the estate of the deceased. The ground upon which such application would be predicated will be **Section 76(d)(ii)** of the **Law of Succession Act** which grants an aggrieved party leave to apply for the revocation or annulment of grant on the grounds that the administrator has failed to diligently proceed with the administration of the estate of the deceased. The respondent shall pay the costs of this application. It is so ordered.

DATED AT NAIROBI THIS 30TH DAY OF APRIL 2014.

L. KIMARU

JUDGE