



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NYERI
SUCCESSION CAUSE NO. 1281 OF 2011

MIRIAM WANGARI NGOCHI.....DECEASED

AND

GODFREY MUTHEE NGOCHI

EPHANTUS WACHIRA NGOCHI..... PETITIONERS

RULING

1. By summons for confirmation of grant the petitioners GODFREY MUTHEE NGOCHI and EPHANTUS WACHIRA NGOCHI applied for confirmation of Grant of letters of administration of the estate of MIRIAM WANGARI NGOCHI and named the following survivors:

GODFREY MUTHEE NGOCHI

EPHANTUS WACHIRA NGOCHI

GLADYS NYAGUTHII KARANJA

2. They named the following as assets of the estate.

LR. 36/11/1045

IRIA-INI /KAIRIA/806

KARATINA TOWN BLOCK 1/597

PLOT NUMBER 231, 232 & 233 IN SUPILI

SAFARICOM SHARES (500 Shares)

Money in Post Bank A/C No. KKAVO550244274

Money in Equity Bank A/C No.0040191774314

KGGCU SHARES (113 Shares)

ONE COW.

3. They proposed distribution as follows:

a. LR. 36/11/1045

GODFREY MUTHEE NGOCHI - ½ share

EPHANTUS WACHIRA NGOCHI - ½ share

b. IRIA-INI /KAIRIA/806 should be given to Ephantus Wachira Ngochi absolutely

c. KARATINA TOWN BLOCK 1/597 should be given to Godfrey Muthee Ngochi absolutely in exchange for KARATINA TOWN BLOCK 1/737 which is currently jointly owned by Ephantus Wachira Ngochi and Godfrey Muthee Ngochi who should transfer his ½ share in that property to Ephantus Wachira Ngochi absolutely.

PLOT NUMBER 231, 232 & 233 IN SUPILI to be shared equally as follow:

two (2) of the said plots namely 231 and 232 to be given to Godfrey Muthee Ngochi absolutely and one (1) of the said plots being 233 to be given to Ephantus Wachira Ngochi absolutely.

d. SAFARICOM SHARES (500 Shares) to be given to Gladys Nyaguthii Karanja absolutely.

e. Post Bank A/C No. KKAVO550244274 - All the money held in the account to be shared equally between Godfrey Muthee Ngochi, Ephantus Wachira Ngochi and Gladys Nyaguthii Karanja

f. Equity Bank A/C No.0040191774314 - All the money held in the account to be shared equally between Godfrey Muthee Ngochi, Ephantus Wachira Ngochi and

Gladys Nyaguthii Karanja.

g. KGGCU SHARES (113 Shares) - to be given to Gladys Nyaguthii Karanja absolutely.

h. The one cow situated in IRIA-INI/KAIRIA/806 to be sold and the proceeds thereof to be shared between Godfrey Muthee Ngochi, Ephantus Wachira Ngochi and Gladys Nyaguthii Karanja.

4. On 11th February 2014 Ephantus Wachira filed an affidavit of objection to confirmation and proposed distribution as follows:

i. LR. 36/11/1045 - Should be given to

GODFREY MUTHEE NGOCHI - ½ share

EPHANTUS WACHIRA NGOCHI - ½ share

ii. IRIA-INI /KAIRIA/806 should be given to Ephantus Wachira Ngochi absolutely

iv. PLOT NUMBER 231, 232 & 233 IN SUPILI -to be shared equally as follows:

two (2) of the said plots namely 231 and 232 to be given to Godfrey Muthee Ngochi absolutely and one (1) of the said plots being 233 to be given to Ephantus Wachira Ngochi absolutely.

v. SAFARICOM SHARES (500 Shares) - to be given to Gladys Nyaguthii Karanja absolutely.

vi. Post Bank A/C No. KKAVO550244274 -All money held in the in account to be shared equally between Godfrey Muthee Ngochi, Ephantus Wachira Ngochi, Gladys Nyaguthii Karanja.

vii. Equity Bank A/C No.0040191774314 – All money held in the account to be shared equally between Godfrey Muthee Ngochi, Ephantus Wachira Ngochi, Gladys Nyaguthii Karanja.

viii. KGGCU SHARES (113 Shares) - to be given to Gladys Nyaguthii Karanja. Absolutely.

ix. The one cow situated in IRIA-INI/KAIRIA/806 to be sold and the proceeds thereof to be shared between Godfrey Muthee Ngochi, Ephantus Wachira Ngochi and Gladys Nyaguthii Karanja.

5. On 27th February 2014 Ephantus Wachira Ngochi filed an application under certificate of urgency under section 45 of Laws of Succession Act Rule 49, 59, 62 and 73 of P&A rules for orders that:

a. The honourable court do find the respondent herein guilty of an offence under the provisions of section 45 .

b. The respondent be restrained from subdividing, selling, transferring, leasing, intermeddling and or distributing the estate of the deceased pending confirmation of the grant.

6. In support of the said application the applicant swore an affidavit in which he deponed that he has been in possession of LR. IRIANI/KAIRIA/806 since 2008 and that his son Richard Ngochi Wachira is currently in occupation. It was further deponed that the respondent has trespassed and taken possession of the deceased property known as IRIANI/KAIRIA/806 and is currently in the process of sub-division amounting to intermeddling in the property of the deceased.

7. In reply to the said application the respondent on 22nd April 2014 filed a replying affidavit in which he deponed that the applicant had filed a false affidavit since the applicant had requested him and his sister that he be allowed to enter the land which they consented on October 2011 when the deceased died to enable him campaign as a director of Ragati Tea Factory.

8. It was further deponed that it is the applicant who has intermeddled with KARATINA TOWN BLOCK 1/157 where he has built a store garage. The applicant milks cows and collect rent on L.R. 36/11/1045 Nairobi and does not give any account.

9. It was deponed that the applicant only intends to delay the distribution of the estate. It was therefore proposed that valuation be done on all the assets of the estate and the same to be fairly distributed.

10. On 3rd March 2014 Gladys Nyaguthii Karanja filed a replying affidavit in which she deponed that on 8th July 2013 they sat down and agreed on the mode of distribution with LR IRIANI/KAIRIA/806 being divided among the three of them and temporary boundaries created therein with each taking the possession and that the applicant signed letter of consent.

11. When the application came up for hearing Mr. Mungai submitted that the applicant had filed an affidavit of objection to the proposed mode of distribution and before the estate is distributed the respondent forcefully entered the property known as LR IRIANI/KAIRIA/806.

12. Mr. Gathiga Mwangi advocate submitted that once you are an administrator you can not be called an inter meddler and that the administrator has only identified the shares of each beneficiary. Gladys Nyaguthii Karanja stated that there is no body who has moved on the land.

13. From the affidavit evidence herein and the submissions the court is called upon to determine whether the respondent has intemeddled with the estate of the deceased for which this court ought to find him liable.

14. The only evidence the applicant has tendered before this court are photographs annexed as CWN1 which to my mind have not helped the court. I have however noted from paragraph 7 of the affidavit of Godfrey Muthee Ngochi that the applicant was allowed in October 2011 when the deceased died to enter into the land so as to campaign as a director of Ragati Tea Factory which has not been rebutted by the applicant.

15. The facts that the applicant has been in possession of the suit land does not mean that the respondent and his sister are not entitled to share of the said land.

16. I therefore find no merit on the application herein dated 26th February 2014 which I hereby dismiss with cost thereof being in the cause.

Dated, signed and delivered at Nyeri this 19th .day of September 2014.

J. WAKIAGA

JUDGE

Court: Ruling read in open court in the presence of Mr. Abuor and Gladys Nyaguthi and the respondent.

J. WAKIAGA

JUDGE