



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

SUCCESSION CAUSE NO. 1023 OF 2009

IN THE MATTER OF THE ESTATE OF ELIZABETH WANINI KIMANI (DECEASED)

JUDGMENT

PLEADINGS

Elizabeth Wanini Kimani, the deceased died on 7th April, 2008 as shown in the Death Certificate No. 122623. The petition for letter of administration intestate for the estate of the deceased was filed on 7th May, 2009. The petition was gazetted on 17th July, 2009. The grant of letters of administration was granted on 25th September, 2009 to Liz Wambui Kingori.

On 11th August, 2010, the administrator, Liz Wambui Kingori on behalf of the beneficiaries filed an application for confirmation of grant. The affidavit annexed to the application outlined the beneficiaries as:

Liz Wambui Kingori	-	Daughter
Joyce Nungari	-	Daughter
Paul Ng'ang'a Kimani	-	Grand son
Samuel Mburu Kimani	-	Grand son

In paragraph 5 of the affidavit of 11th August, 2010 the proposed mode of distribution was outlined. Paul Kimani and Samuel Kimani filed an affidavit of protest on 25th August, 2010 and opposed the confirmation of grant because their consents were not obtained by the other beneficiaries. They also took issue with the mode of distribution as the administrator and one (1) beneficiary have taken the most valuable property leaving the protestors without anything of value.

ORAL EVIDENCE

On 6th October, 2012 the matter proceeded for hearing before Justice L. Njagi when Liz Wambui Kingori testified on the confirmation of grant. The protestor did not attend Court. The matter proceeded for hearing on the 23rd September, 2014 and the protestor adduced the following evidence; Paul Nga'ng'a Kimani and his brother, now the late Samuel Mburu Kimani are children of the late Anastacia Wangari Kimani (deceased) who was one of the daughters of Elizabeth Wanini Kimani, the deceased herein. The Protestor is a grandson to the deceased and contests the grant of letters of administration obtained by the administrator Liz Wambui Kingori and the mode of distribution obtained in the affidavit annexed to the application filed on 11th August, 2010.

The Protestor claimed, he was not informed or consulted and his consent was not obtained when letters of administration were obtained for the estate of the deceased.

With regard to the proposed distribution; the properties listed have been valued and a report filed on 18th September, 2010. Looking at the estimated value of the property the Protestor has been allocated the property of Muchokaniria Company Limited 20 shares and plot No. 5415 of Kayole which are of minimal value while the two (2) other beneficiaries have allocated themselves the properties of higher estimated value as shown in the Valuation Report.

The administrator Liz Wambui Kingori informed the Court that she is one of the beneficiaries to the estate of her late mother, the deceased's herein. She has a sister Joyce Wangari (alive). Anatacia Wangare (deceased and mother to the protestor Paul Nganga Kimani) and Jane Wanjiru (deceased with no children).

The administrator informed the Court that when she was petitioning the Court for grant of letters of administration, she went to the Area Chief and he wrote the letter dated 2nd July, 2008. The Protestor's name is included and also that of his brother, Samuel Mburu Kimani (now deceased). She called Paul Ndungu Kimani to the Chief's office and he refused to come because he felled trees on the land he lived with his grandmother (deceased) and sold the same without consulting or with authority of the beneficiaries.

The administrator also lodged in **Court Case Number 658/2009** against the excavator in one of the deceased's plot which operates as a quarry. The excavator refused to make payments; when she obtained letters of administration and letters she filed the case on behalf of the deceased's estate. From the proceeds of the quarry, all beneficiaries opened an account for the amount of money paid and shared in equal shares.

The administrator told the Court that they have tried to call the protestor to come and they discuss the mode of distribution of the deceased's estate and he refused to come. He lived with his late brother at the deceased's home after their grandmother's death; the Protestor continued to live in the said home he sold everything and in the end the administrator was forced to hire a caretaker.

ISSUES

The issues for determination are;

Is the confirmation of grant of 11th August, 2010 valid legal and regular?

Is the mode of distribution of the property of the deceased fair, equitable and just to all beneficiaries?

LAW

The legal provisions pertaining to distribution of the deceased's estate are as follows;

Section 71 of the Law of Succession Act Cap 160 provides;

''Provided that in cases of intestacy, the grant of letters of administration shall not be confirmed until the Court is satisfied as to the respective identities and shares of all persons beneficially entitled; and when confirmed the grant shall specify all such persons and their respective shares.''

EVALUATION

The Court has carefully considered the evidence adduced by all parties in form of pleadings and oral evidence. With regard to the first issue; the confirmation of grant application is properly before the Court. The same was based on the grant of letters of administration issued to the administrator Liz Wambui Kingori, after she presented the petition with all beneficiaries including the Protestor. She called him to

the Chief's office and he refused to go but his late brother went to the Chief's Office.

Although he did not give consent; he was informed and was aware, he was included as a beneficiary and the petition was gazette for 30 days. The Court finds that the Protestor willingly and knowingly refused to consent or register an objection at the time.

The application for confirmation of grant of 11th August, 2010 is the one that the Protestor lodged the affidavit of protest and listed the grounds of objection which are the subject of the hearing and determination in this cause.

Looking at the mode of distribution attached to the application for the confirmation of grant of the deceased's estate; this Court is not satisfied with the mode of distribution;

On 16th October, 2012 when the administrator testified before Justice L. Njagi she stated;

''In terms of sharing we intend to divide into three (3) equal shares; one for my sister Joyce, one for me and one for my late sister's sons represented by the Protestor.''

The list attached with the outlined properties does not reflect three (3) equal shares; secondly, the Valuation Report of 18th September, 2010 regarding the value of all the properties, the Protestors allegation that they were allocated properties with less estimated value is true.

The summary of the value of the properties on page 38 of the Valuation Report by Precision Valuers indicates as follows:

PLOT NO.	OPEN MARKET VALUE
1. 209/11373/136 (Mlango Kubwa Plot Muchokaniria Co. Ltd 20 share	Ksh. 2,000,000/=
2. Juja/Kiaura/Block/469 Paul Nganga Kimani	Ksh. 800,000/=
3. 120506/5 at Juja Town Joyce Mungari	Ksh. 1,000,000/=
4. Juja Kiaura/Block/37 All beneficiaries equally	Ksh. 3,000,000/=
5. B 5415 Kayole Liz Wambui Kingori	Ksh. 2,000,000/=
6. Stall No. 37 Juja Town Liz Wambui Kingori	Ksh. 20,000/=
7. Githunguri/Gathiga/2559	Ksh. 1,000,000/=

Liz Wambui Kingori

8. Mavoko Block 12/151 Ksh. 250,000/=

Paul Nganga Kimani

Other properties not listed are;

9. Githiga Muri Co. Ltd Not valued

Joyce Mungari

Paul Nganaga Kimani and the late Samuel Mburu both were to inherit the least valuable properties when the rest was to be obtained by the administrator and one other beneficiary respectively.

This Court is guided by **Section 28 and 35 (5) of the Law of Succession Act Cap 160** on the circumstances to be taken into account by the Court on making orders and exercising discretion on distribution of the deceased's estate among the beneficiaries.

The Protestor is a dependant within **Section 29 (b) of the Law of Succession Act Cap 160** and confirmed in evidence he lived with his grandmother until her death; the deceased herein. He was to share in the estate by virtue of being the biological son of Anastacia Wangari (who died in 1991) daughter of the deceased herein. Having satisfied that the Protestor is entitled to the equal share of his late mother from his late grandmother's estate;

This Court finds that equitable distribution would include;

- a. The Protestor in addition to
 - i. Juja/Kiaura /Block 469
 - ii. Mavoko Block 12/151 also obtains
 - iii. Githiga Mwiri Co. Ltd from Joyce Mungari.
- b. All beneficiaries continue sharing proceeds of Juja/Kiaura/Block 37 from the excavator of the quarry and later subdivide it into three (3) equal portions and leave the burial site separately.
- c. All three (3) beneficiaries share equally proceeds of E. A. Building Society Account (Ecobank).
- d. All three (3) beneficiaries share equally proceeds of the Account in National Bank of Kenya A/C 0124305245000.

READ AND SIGNED AT NAIROBI THIS 9TH DAY OF DECEMBER, 2014.

MARGARET MUIGAI

JUDGE

In the presence of:

The beneficiaries and absence of the Protestor.