



REPUBLIC OF KENYA

High Court at Nyeri

Succession Cause 189 of 2009

WAMBUGU MIRUGI alias JOSPHAT WAMBUGU MIRUGI(DECEASED)

AND

MATHEW MBATIA NJARIPETITIONER

RULING

1. The petitioner MATHEW MBATIA NJARI filed a petition for grant of letters of administration to the estate of WAMBUGU MIRUGI alias JOSPHAT WAMBUGU MIRUGI claiming purchase's interest and named Tabitha Waruguru Kigara, Harun Githiaka Wambugu and Julius Baragu Wambugu as survivors.
2. At the stage of confirmation of grant the protestor Tabitha Waruguru Kigara filed an affidavit of protest against the proposed mode of distribution and stated that the petitioner is a stranger to the estate of the deceased and proposed that the estate be shared in equal shares amongst the deceased survivors namely:
 - a SIMON MAINA WAMBUGU MIRUGI
 - b. HARUN GITHIAKA WAMBUGU
 - c. TABITHA WARUGURU KIGARA on behalf of Samuel Kigara Mirugi (deceased)
 - d. JULIUS BARAGU WAMBUGU
3. Directions were given by court that the protest be heard by way of affidavit evidence and written submissions.
4. The petitioner filed a further affidavit on 17/7/2012 in which he deponed that he had purchased a portion of 0.6 acre of the deceased estate being the share of Samuel Kigara Wambugu the protesters deceased husband.
5. In support thereof the petitioner annexed an agreement for sale dated 13/3/97 and that the deceased approved the said portion to be sub divided from his land on 19/5/97 which portion Formed AGUTHI/GAKI/1450 and the deceased retained AGUTHI/GAKI/1451 and that the deceased had executed transfer but died before the same was registered.
6. The petitioner filed an affidavit in support sworn by George Kingori Njari on 1st3/7/2010 in which he deponed that he witnessed the agreement between Samuel Kigara Wambugu and the petitioner herein and that he was also present during the subdivision of land parcel AGUTHI/GAKI/690.

7. In her submissions the protester has submitted that the petitioner does not purport to have purchased the 0.6 acre from the deceased and therefore his claim is not a liability of the estate of the deceased.

8. It is further submitted that under the law of succession Act The Honourable court is enjoined to distribute the net estate of the deceased among the entitled beneficiary after the settlement of established liabilities and that the petitioners claim is not an established liability against the estate of the deceased and that his remedy would be against the estate of Samuel Kigara Wambugu.

9. The petitioner in his submission submitted that the protester is the wife of one Samuel Kigara Wambugu a son of the deceased and that other two sons of the deceased who are beneficiaries to the estate though served are not opposed to grant being confirmed as proposed by the petitioner as they are aware of the petitioners entitlement to part of the estate.

10. From the affidavit evidence the following facts are not in dispute.

a. ***The petitioner purchased 0.6 acres being the interest of the protestor's husband in the said estate.***

b. ***The claim herein does not form a liability against the estate of the deceased but the estate of one Samuel Kigara Wambugu the protesters husband.***

c. ***the sale herein was entered into during the life time of the deceased and with his consent.***

11. Whereas in law the protester claim is not against the estate of the deceased I take note that this transaction was entered into during the life time of the deceased with his approval as confirmed by the execution of transfer and mutation thereof.

12. I therefore take the view that equity considers as done that which ought to have been done and there being evidence of the validity of an agreement for sale of the interest of the protesters husband in the said estate I am of the considered view that the protest herein lacks merit.

13. The protester can not undo what was done by her husband in his life time and there being no evidence of fraud in this transaction herein I am of the considered view that the same is valid and ought to be enforced as proposed in the mode of distribution.

14. I therefore dismiss the protest herein with no orders as to cost and order that the grant be confirmed as proposed by the petitioner.

Dated and delivered at Nyeri this 31st day of January 2013.

J. WAKIAGA

JUDGE

Read in open court in the absence of the advocates for the parties.

J. WAKIAGA

JUDGE