

REPUBLIC OF KENYA

High Court at Nairobi (Nairobi Law Courts)

Succession Cause 501 of 2012

IN THE MATTER OF THE ESTATE OF MARIGA NJUGUNA (DECEASED)

RULING

The administrators of the estate of Mariga Njuguna (deceased) placed a Summons before the court dated 29th January 2013, asking that the grant issued to them on 18th July 2012 be confirmed.

The deceased died on 8th March 1992. According to the papers lodged in court on 13th March 2012 as part of the application for grant of letters of administrators intestate, the deceased was survived by a widow, four sons and a purchaser. The summons for confirmation seeks distribution of the estate between the widow and her four sons and the purchaser.

When the matter came up for the hearing of the summons on 20th February 2013, the widow, who is one of the administrators, disclosed that there were also three daughters who are all married. She named them as Grace Wanjiru, Njambi and Wanjiku. She also informed the court that Joseph Njoka Kamau, purchased property from the estate in 2012.

The deceased died intestate and was survived by a widow and children. He died in 1992 long after the Law of Succession Act had come into force. His estate therefore fell for administration under the Law of Succession Act. Since he died intestate, Part V of the Law of Succession Act applied. The relevant provision in Part V is **Section 35**, which provides for distribution of the estate of a person survived by a spouse and children. The provision does not discriminate between male and female children. The estate should be distributed between all the children of the deceased irrespective of their gender or marital status. A child will be excluded from benefit only if he or she renounces or disclaims their share.

The daughters in this case have been dealt with in a discriminatory manner. They were not disclosed in the petition for grant and have not been provided for in the confirmation application. There is no evidence that they have renounced or disclaimed their entitlement to a share in the estate. The proposed distribution cannot be allowed to stand.

Joseph Njoka Kamau, the alleged buyer/purchaser did not survive the deceased. The persons who are referred to as survivors of a deceased person are set out in Part V of the Law of Succession Act. They are family members, either spouses or children or parents or siblings or relatives to the nearest degree of consanguinity with the cut off at the sixth degree. Where there are no survivors of the deceased, the estate escheats upon the state in *bona vacantia*. There is no mention of purchasers or creditors in Part V of the Act, and therefore there was no legal basis upon which Joseph Njoka Kamau was listed as a survivor of the deceased.

The creditor who is factored in at confirmation is he that dealt with the deceased or lawfully with the estate. If the debt in question was incurred by the deceased prior to his demise then the administrator must provide for the debt at the confirmation stage. If the debt was incurred by the estate legitimately after the death of the property owner, the administrator can also cater for it at confirmation.

The alleged purchaser in this case is alleged to have had bought the property in 2012. This transaction occurred ten (10) years after the deceased's demise. No documentary proof of the transaction has been attached to the application. No background has been given as to why the property was sold and what became of the proceeds of sale. Administrators are trustees and it behoves them at confirmation to account to the court of their actions with regard to the assets.

It would appear, because the record is not clear on this, that the alleged purchaser acquired a portion of an immovable asset. Section 82 of the Law of Succession Act provides that no immovable assets shall be sold before the confirmation of the grant. If the exigencies of administration demand that such assets be disposed of to meet a certain pressing need, then leave of court must be obtained. In this case no evidence has been provided that leave of court was sought and granted before a portion of Escarpment (Jet) Scheme/483 was sold to Joseph Njoka Kamau. The said sale was in contravention of Section 82 of the Law of Succession Act. The said transaction was therefore unlawful and void. The said purchaser acquired no interest whatsoever in the estate and is not entitled to a share in the same. This is particularly so as the administrator has not accounted for this transaction.

For the reasons given above, the confirmation application before me is not merited. I will dismiss it. The Administrators shall file a fresh application for confirmation of the grant issued to them by the court, in which they shall provide for the three daughters of the deceased. In the event the daughters are not interested in taking a share in the estate, the said daughters file affidavits renouncing or a disclaiming their respective shares. Joseph Njoka Kamau shall be excluded from distribution.

It is so ordered.

DATED, SIGNED and DELIVERED at NAIROBI this 26th DAY OF April, 2013.

W.M. Musyoka

Judge