



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MILIMANI
SUCCESSION CAUSE NO. 2611 OF 1998

IN THE MATTER OF THE ESTATE OF STEPHEN NGURE MBUTHIA (DECEASED)

RULING

The issue relating to the distribution of the estate of the deceased was resolved before Rawal J, as she was then, by consent of the parties. It was also agreed that Mutitu/Ngoru Block 2/19 had been gifted *inter vivos* to Lilian Wanja Ngure, a daughter in the second house. The only issue outstanding resolution is the distribution of Nyandarua/Ol'Joro-Orok West/887.

The grant herein was confirmed 17th May 2000. Nyandarua/Ol'Joro-Orok West/887 was allotted to Wanja Ngure, a daughter in the first house. The court has been invited to revisit this allocation. To facilitate the same it was directed that a valuation be done of Mutitu/Ngoru Block 2/19 and Nyandarua/Ol'Joro-Orok/887.

I have on record three valuations- one on Mutitu/Ngoru Block 2/19, and the other on Nyandarua/Ol'Joro-Orok/887. The valuation on Mutitu/Ngoru Block 2/19 was done by Ark Consultants Ltd. Their report is dated 26th October 2006 and in it the value of the property was put at Kshs.900,000.00. Nyandarua/Ol'Joro-Orok/887 was valued by Ark Consultants Ltd and the District Valuation Officer for Nyandarua and Samburu Districts. They assessed the value of the property at Kshs.750,000.00 and Kshs.880,000.00 respectively. Their reports are dated 27th October 2006 and 19th October 2006, respectively.

As at the time of the valuation, Mutitu/Ngoru Block 2/19 was registered in the name of Lilian Wanja Ngure, while Nyandarua/Ol'Joro-Orok/887 was registered in the name of Wanja Ngure. The registration of Lilian Wanja Ngure as proprietor of Mutitu/Ngoru Block 2/19 was done on 29th March 1993, well before the deceased's death on 30th July 1998. There is no green card on record to indicate who the previous owner was, but if it was transferred from the deceased, Stephen Ngure Mbuthia, then this was an *inter vivos* transfer, and the said property did not form part of the estate of the deceased, hence it was not available for distribution as part of the estate.

The registration of the other Wanja Ngure, also known as Beatrice, as proprietor of Nyandarua/Ol'Joro-Orok/887 was effected on 8th August 2000. That was done two years after the demise of the deceased, and it followed the confirmation of the grant on 17th May 2000. The court is being asked to revisit this devolution to Beatrice Wanja Ngure, and to look at it in the context of the *inter vivos* gift made to Lilian Wanja Ngure.

I note that the two daughters came from each of the two houses. Lilian Wanja Ngure, the beneficiary of

the *inter vivos* transfer of Mutitu/Ngoru Block 3/19, comes from the second house, while Beatrice Wanja Ngure, the beneficiary of the devolution of Nyandarua/Ol'joro-Orok/887, is from the first house. The other assets have been shared out equally or evenly between the two houses. It would appear to me that if Nyandarua/Ol'Joro-Orok/887 is subjected to division between the two houses, the first house would be disadvantaged. The two assets appear to be of almost equal value. Justice would be served by Beatrice Wanja Ngure retaining Nyandarua/Ol'Joro-Orok/887.

The law allows me, while distributing an estate intestate, to take into account any previous benefits. This rule is called bringing property to the hotch potch. It should apply to this estate in balancing out the distribution as between the first and the second house. The rule is stated in **Section 42** of the Law of Succession Act, which provides:-

“42. Where -

to or for (a) ***an intestate has, during his lifetime or by will, given or settled any property the benefit of a child, grandchild***

or house;...

estate finally ***that property shall be taken, into account in determining the share of the net intestate accruing to the child, grandchild or house.”***

In the end, I hold that Nyandarua/Ol'Joro-Orok/887 shall remain the property of Beatrice Wanja Ngure and Mutitu/Ngoru Block 2/19 the property of Lilian Wanja Ngure. The rest of the estate shall devolve as per the certificate of confirmation of grant dated 17th May 2000. Costs shall be in the cause.

SIGNED DATED and DELIVERED in open court this 30th day of August, 2013.

W.M. MUSYOKA

JUDGE