



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYERI

SUCCESSION CAUSE NO. 101 OF 2009

**IN THE MATTER OF ESTATE OF LINO WANGURU S/O MWAGANU alias WANGURU
MWAGANU -DECEASED**

PAUL NGATIA WANGURUPETITIONER

VERSUS

PATRICK KARUHI WANGURU PROTESTOR

JUDGMENT

A grant of letters of administration intestate in respect of the Estate of Lino Wanguru s/o Mwaganu alias Wanguru, deceased was made to Paul Ngatia Wanguru on 2nd June, 2010. Paul Ngatia Wanguru took out the summons for confirmation dated 8th January, 2011 in which he sought for the grant to be confirmed. Patrick Karuhi Wanguru, was not happy with the Petitioner's schedule of distribution and also the inclusion of some people as beneficiaries hence he filed the affidavit of Protest. Unfortunately, before the dispute could be heard, Paul Ngatia Wanguru passed away thus prompting this court to revoke the grant issued to him and to issue a fresh grant to Zaveria Nyambura Ngatia. For purposes of these proceedings Zaveria Nyambura Ngatia will be referred to as the Petitioner while Patrick Karuhi Wanguru will be referred to as the Protestor. When the matter came up for hearing, this court with the approval of the parties directed that the same be disposed of by affidavit evidence and by written submissions.

I have considered the affidavit evidence plus the written submissions. The Petitioner proposed to have the deceased's Estate shared as follows:

(a) Othaya/Gura/379 to be shared in three(3) equal portions to be registered as follows:

- i. Paul Ngatia Wanguru on behalf of the house of Consolata Wanjiru Lino
- ii. Daniel Ndegwa and Paul Ngatia on behalf of the house of Elizabeth Wagaki Linus
- iii. Phillip Mwangi and Patrick Karuhi on behalf of the house of Margaret Wanjiru Linus; in equal shares.

(b) Shares to be shared equally between the houses and be registered as follows:

- i. 20 shares Makindi Mahoti and Jumapili – Paul Ngatia Wanguru
- ii. 20 shares – Daniel Ndegwa and Paul Ngatia
- iii. 20 shares- Phillip Mwangi and Patrick Karuhi

**(c)All the monies in Othaya Farmers Co-op Society
between the three houses with:-**

Limited be shared equally

- i. Paul Ngatia taking share of the house of Consolata Wanjiru Lino
- ii. Daniel Ndegwa and Paul Ngatia taking share of the house of Elizabeth Wagaki Linus.
- iii. Phillip Mwangi and Patrick Karuhi taking share of the house of Margaret Wanjiru Linus.

The Protestor on his part was of the view that the Petitioner misled the court by including persons who are deceased as having survived the Estate. He named those people as Elizabeth Wagaki w/o Wanguru and Margaret Wanjiru w/o Lino. The Protestor also accused the Petitioner of omitting 29 shares of Uwaka owned by the deceased. He also claimed that the Petitioner's proposed schedule of distribution went against the wishes of the deceased. He averred that the deceased had shared his land inter vivos equally between his five sons. The Protestor further alleged that the Petitioner's schedule of distribution went against the provisions of **Section 40** of the Law of Succession. The Protestor proposed the Estate to be distributed as follows:

i. **L.R.NO. OTHAYA/GURA/379**

- a) Dominic Paul Ngatia Wanguru - 1/5 thereof
- b) Paul Ngatia Wanguru - 1/5 thereof
- c) Daniel Ndegwa Wanguru - 1/5 thereof
- d) Philip Mwangi Wanguru - 1/5 thereof
- e) Patrick Karuhi Wanguru - 1/5 thereof

ii. **MAKINDU MAHOTI & JUMAPILI SHARES**

- a) Paul Ngatia Wanguru

iii. **29 SHARES OF UWAKA**

- a) Dominic Paul Ngatia Wanguru - 6 shares
- b) Paul Ngatia Wanguru - 6 shares
- c) Daniel Ndegwa Wanguru - 6 shares
- d) Philip Mwangi Wanguru - 6 shares
- e) Patrick Karuhi Wanguru - 6 shares

There is no dispute that the deceased was married to three wives namely:

- i. Consolata Wanjiru Lino
- ii. Elizabeth Wagaki Lino
- iii. Margaret Wanjiru Lino

It is the submission of the Petitioner that the Estate be shared as per his schedule which is according to the houses and in accordance with **Section 40** of the **Law of Succession – Act**. He pointed out that the schedule of distribution given by the Protestor is against the Law and the wishes of the deceased. After a careful consideration of the competing arguments, I am satisfied the mode of distribution proposed by the Petitioner appears to meet the requirements of **Section 40** of the **Law of Succession Act** which is also in accordance with the wishes of the family members who met and agreed on the mode of sharing on 13th December, 2005 as per the annexure marked as **M.1** attached to the replying affidavit of the Petitioner sworn on 17th October, 2011.

In sum, I see no merit in the Protest. The same is dismissed with each party bearing his own costs. I confirm the grant as proposed by the Petitioner.

Dated, signed and delivered this 23rd day of August, 2013

J.K. SERGON

JUDGE

In open court in the presence of Mr. Kingori holding brief for

Karweru for Petitioner

N/A for Kiama for the Protestor