



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NYERI
SUCCESSION CAUSE NO.336 OF 2002
IN THE MATTER OF THE ESTATE OF
ALFRED THORONJO WAMBUGU – DECEASED

A N D

GRACE WATIRI THORONJO.....PETITIONER

versus

JOSEPH WAMBUGU THORONJO

CECILIA WANJIRA THORONJO

WELLINGTON GACHUCHA THORONJO

HARRISON WANJOHI THORONJO.....PROTESTORS

R U L I N G

The subject matter of this ruling is the Summons for Confirmation of Grant dated 29th January, 2005 taken out by **Grace Watiri Thoronjo**, the Petitioner herein. The summons is opposed by **Joseph Wambugu Thoronjo, Cecilia Wanjira Thoronjo, Wellington Gachucha Thoronjo** and **Harrison Wanjohi Thoronjo**, the Protestors herein, opposed the summons by filing the affidavit of Cecilia Wanjira Thoronjo.

In the summons for Confirmation of Grant, the Petitioner identified three of the Protestors as the children of Alfred Thoronjo Wambugu, deceased namely Joseph Wambugu Thoronjo, Cecilia Wanjira Thoronjo and Wellington Gachucha Thoronjo. She also identified the following properties to be the assets of the estate which were available for distribution:

- i. L.R. No. Aguthi/Muruguru/501.**
- ii. L.R. No. Aguthi/Muruguru/540.**
- iii. Plot No.16, Gatitu.**
- iv. Plot No. 3 Githiru.**
- v. Shares with Jubilee Insurance Company Limited.**

vi. Cash held in A/C. No.1040-0-116758 H.F.C.K., Nyeri.

The Petitioner proposed for the above assets to be solely transmitted to herself. This proposal prompted the Protesters to resist the Petitioner's move. The Protestors indicated that the deceased was married to two wives namely:

i. Maria Njoki Thoronjo (now deceased)

a n d

ii. Grace Watiri Thoronjo (Petitioner).

They pointed out that the first wife was blessed with three children namely Joseph Wambugu Thoronjo, Cecilia Wanjira Thoronjo and Wellington Gachucha Thoronjo. The Petitioner being the deceased's second wife, was blessed with the following children:

- **Rose Wangui Thoronjo,**
- **Jane Njeri Thoronjo,**
- **Patrick Maina Thoronjo and**
- **Caroline Wanjira Thoronjo.**

The Protestors proposed that the estate be shared in equal proportion between the deceased's seven children instead of being given solely to the Petitioner.

When the dispute came up for hearing, learned counsels appearing in this Cause recorded a Consent order in which the assets and the beneficiaries of the estate were agreed as follows:

(a) Assets:

- (i) Aguthi/Muruguru/501**
- (ii) Aguthi/Gatitu/540**
- (iii) Plot Number 16 Gatitu.**
- (iv) Plot Number 3 Githiru.**
- (v) Shares in Jubilee Insurance
Company Limited Member No.6281.**
- (vi) Money in Housing Finance Company
Limited Nyeri.**
- (vii) Pension.**

(b) Beneficiaries:

- (i) Grace Watiri Thoronjo – Widow.**
- (ii) Rose Wangui Thoronjo – daughter.**

(iii) Jane Njeri Thoronjo - daughter.

(iv) Patrick Maina Thoronjo – son

(v) Caroline Wanjiru Thoronjo daughter.

(vi) Joseph Wambugu Thoronjo – son.

(vii) Cecilia Wanjira Thoronjo – daughter.

(viii) Wellington Gachucha Thoronjo – son.

Having settled on the issue relating to the assets and the beneficiaries this Court was then asked to make orders to distribute the estate. It is the submission of the Petitioner that the deceased had a very bad relationship with the Protestors to the extent that they did not attend the deceased's funeral as demanded by the deceased. It is the submission of the Petitioner that the deceased had expressed his wish that the Protestors should not inherit his property. She stated that the deceased had stated that the Protestors be bought land elsewhere to be settled rather than come back to settle on the parcels of land in question. It is argued that it was the deceased's wish that his properties be solely given to the Petitioner. It is the Petitioner's submission that her proposed mode of distribution is in line with the deceased's wishes. The Protestors on their part do not agree with the Petitioner's submissions. The Protestors urged this Court not to buy the Petitioner's story because it is evident that the Petitioner has also excluded her children from sharing the estate yet they are presumed to have been in good books with the deceased. The Protestors have urged this Court to order that they be given **L.R. No. Aguthi/Gatitu/540** where they have been residing since the death of the deceased and Plot No. 16, Gatitu. They proposed that the Petitioner be given the shares with Jubilee and the money held with Housing Finance Company of Kenya. The Protestors further proposed that the house of the Petitioner be given **L.R. No. Aguthi/Murugugu/501 and Plot 3, Githiru.**

From the evidence and the submissions, it is settled that the assets and beneficiaries of the estate have been identified. What remains is the question of distribution. The Petitioner is of the firm view that the deceased had expressed his wishes on the manner of sharing his estate. After a critical examination of the evidence tendered before this Court, I am not convinced there was credible evidence that the deceased had expressly stated that the Protestors be excluded from sharing his estate. It is quite evident from the material placed on record that the deceased may not have had a cordial relationship with the Protestors. That in itself does not permit this Court to make orders that will disinherit his children from taking a share of his estate. The Protestors cannot be put in the category of murderers who cannot inherit the deceased's estate under **Section 96(1)** of the **Law of Succession Act**. In my considered opinion, I am satisfied the Protestors together with their other siblings are entitled to a share of the estate. I find the protest to be well merited.

The remaining issue to be determined is the question of distribution. I have already stated how each side wants the assets to be shared. Let me start by stating that the deceased was married to two wives. The first wife is now deceased while the Petitioner is the second wife. According to the provisions of **Section 40(1)** of the **Law of Succession Act**, the estate shall be divided among the houses according to the number of children in each house and adding the surviving wife as an additional unit to the number of children. In this cause the houses are comprised of the following:

(i) First House (Maria Njoki Thoronjo, deceased).

(a) Joseph Wambugu Thoronjo – son.

(b) Cecilia Wanjira Thoronjo – daughter.

(c) Wellington Gachucha Thoronjo – son.

(ii) Second House (Grace Watiri Thoronjo)

(a) *Grace Watiri Thoronjo – Widow.*

(b) *Rose Wangui Thoronjo – daughter.*

(c) *Jane Njeri Thoronjo – daughter.*

(d) *Patrick Maina Thoronjo – son.*

(e) *Caroline Wanjiru Thoronjo – daughter.*

It is obvious from the above that the first house are comprised of three (3) members and the second house is comprised of five members. It goes without saying that the first house is entitled to get ? while the second house gets ? of the estate of Alfred Thoronjo Wambugu, deceased. The proposals made by both sides in distributing the estate does not meet the requirements of **Section 40** of the **Law of Succession Act**. Consequently, I direct Cecilia Wanjira Thoronjo representing the Protestors to file and serve a further affidavit with a schedule of distribution which strictly complies with the provisions of **Section 40** of the **Law of Succession Act** within a period of 15 days from the date hereof to enable this Court promptly confirm the grant. Since the dispute involves members of the same family, I direct that each meets his or her own costs.

Dated and delivered this 27th day of April 2012.

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J. K. SERGON

JUDGE

In open court in the presence of W. Macharia holding brief Miss Mwai for Petitioner and no appearance for B. G. Kariuki for objectors.