



REPUBLIC OF KENYA

High Court at Nyeri

Probate & Administration 3 of 2011

KURIA MURIU .....1st APPELLANT

HANNAH WANJIRU MURIU.....2ND APPELLANT

versus

MBIU NJOMO.....RESPONDENT

*(Appeal arising from the ruling of Hon S. Mbungi Principal Magistrate*

*Kigumo in succession Cause No. 11 of 2010.)*

JUDGMENT

This is an appeal against the ruling of the Principal Magistrate's Court Kigumo in succession Cause No. 11 of 2010 in which he ordered that the petitioner and the two objectors be and are hereby appointed joint administrators of the estate of the deceased MURIU NJOMO.

Being aggrieved by the said ruling the appellants filed the appeal herein and raised three (3) grounds of appeal namely:

- 1. The learned Principal Magistrate erred in law in appointing the respondent one of the administrators of the estate of the deceased while he was not qualified to be so appointed in the face of the strenuous opposition by the appellants considering that the appellants are the children of the deceased while the respondent is a brother who is not even using any part of the assets of the estate.***
- 2. The learned Principal Magistrate erred in law in appointing the respondent one of the administrators of the estate of the deceased when it was abundantly clear that his interest are hostile to the estate as he had unsuccessfully sued the deceased for part of the land comprised in the estate and therefore he could not be a good administrator of the estate.***
- 3. The learned Principal Magistrate erred in law in not finding that since the High Court had already decided in Nyeri H.C.C.A. No. 30 of 2003 that any claim by the respondent to the land (which comprises the estate) is statutorily time barred and could not be enforced, then the respondent should not play any part in the administration of the estate of the deceased.***

They therefore pray that the appeal be allowed and the ruling of the principal Magistrate's court be set aside and orders made dismissing the respondent's petition in the lower court and that the appellants be appointed joint administrator of the estate of the deceased. The memorandum of appeal was

subsequently amended to reflect the current case number before the lower court.

On 20th April 2004 the parties herein agreed that the appeal be disposed of by way of written submissions which have now been filed before me.

The brief history of this matter is that the respondent who is the brother to the deceased petitioned the lower court for the grant of letters of administration in his capacity as a brother.

The appellants filed objections and cross petition to be granted letters of administration in their capacity as the children of the deceased.

The only asset of the estate is land known as LOC.2/GACHARAGE/889.

It should be pointed out that the second appellant one Hannah Wanjiru Muriu died on 1st December 2011 and therefore her appeal can not said to have abated in law.

The only issue for determination in this appeal is whether the trial court was right in appointing the parties herein join administrators to the estate of the deceased.

On behalf of the appellants it is pointed out that the trial court was wrong for failing to follow the guidelines given under section 66 of the Law of Succession Act and that the court failed to exercise the discretion given judiciously.

It was submitted that the petitioner who is a brother of the deceased cannot have precedent over the objectors in the matters of administration of the estate of the deceased. It was further submitted that the petitioner is not a fit administrator of the estate as he had filed a suit against the deceased concerning the only asset of the estate.

It was further submitted that it was wrong for the trial magistrate to join the appellants with the respondent as co-administrators considering that they are not likely to cooperate with each other in the administration of the estate considering the mutual distrust, suspicion and competing interests and that there were no special conditions or circumstances to lead the learned magistrate to go outside section 66 of the law of succession.

It was further submitted that the High Court had ruled that the respondents right over the asset of the estate was unenforceable and therefore the court should not have found that he is a beneficiary.

On behalf of the Respondent it was submitted that since the one of the appellants is dead and no substitution has been made the appeal fails.

It was submitted that section 66 of Cap 160 is only a guide (general guide) and that the court has discretion and that the trial court appreciated the rights and interest of the parties and did exercise his discretion as directed by section 66 of Law of Succession and rule 73 of the Probate and Administration rules.

It was further submitted that the judgment of the High court in HCCC No. 30/2003 only dealt with an award of the tribunal from the central provincial appeal committee and that the said judgment did not exclude the claim by the petitioner in succession cause.

As pointed out herein the issue before the trial court was as to between the appellant and the Respondent had the right to be appointed the administrator of the estate of the deceased I note that the trial court at page 4 of the judgment rightly held that had the spouse of the deceased applied for letters of administration the court would have granted her the first priority. He should have also noted that section 66(b) provides that other beneficiaries entitled on intestacy with priority according to their respective beneficial interest as provided by part v which provides for renunciation of right to apply for letters of administration.

It should be noted that the appellants have not renounced their rights to apply for letters of administration and that the rights of the appellants as children of the deceased ranks higher than that of the respondent who is his brother. By the said court holding that he should benefit from the estate of the deceased is disputed by the parties and that for the court to be able to determine who is rightful beneficiary between the two parties is fair to give their equal chances in relation to the deceased estate the court fails into error as it were.

The issue before the court was as to between the respondent and the appellant who rank in priority for the grant of letters of administration.

To my mind the appellants ranked higher than the respondent and there was no special circumstances present to the court upon which the respondent should have been appointed co-administrators, if he has any entitlement to the estate as alleged in his submission the same can be ventilated upon during the confirmation of the estate of the deceased as was rightly pointed out by the trial magistrate.

From the above I therefore set aside the judgment of the trial magistrate appointing the appellants and the respondent as the administrators and the second appellant having died the first appellant should move to substitute the same with any suitable party including the respondent who is their uncle.

This being a family issue each party shall bear their own cost.

Dated and delivered at Nyeri this 25th day of October 2012.

**J. WAKIAGA**

**JUDGE**

The judgment is read in open court in the absence of the parties and their advocates.

**J. WAKIAGA**

**JUDGE**