



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI**

**SUCCESSION CAUSE NO.2399 OF 2002**

**IN THE MATTER OF THE ESTATE OF KENNETH WAWERU NGUGU - (DECEASED)**

**LUCY WAHU CHEGE.....1<sup>ST</sup>**  
**PETITIONER**  
**PAUL MBURU CHEGE.....2<sup>ND</sup>**  
**PETITIONER**

**VERSUS**

**LUCY NJERI NGUGI.....**  
**.....OBJECTOR**

**R U L I N G**

Kenneth Waweru Ngugi, the deceased to whose estate these proceedings relate died on 12<sup>th</sup> January 2002. On 23<sup>rd</sup> July 2003, Lucy Njeri Ngugi and Simon Kuria Ngugi, mother and brother respectively of the deceased cited Lucy Wahu Chege, the widow of the deceased, seeking directions from the court that she be compelled to petition the court to administer the estate of the deceased. The widow of the deceased did enter appearance. She duly petitioned the court together with her brother, Paul Mburu Chege, (the petitioners), to be issued with a grant of letters of administration intestate in respect of the estate of the deceased. It appeared that the mother and brother of the deceased formed the view that the widow of the deceased would, in the petition, recognize them as beneficiaries of the estate of the deceased. That was not to be. The petitioners listed the beneficiaries of the estate of the deceased as Lucy Wahu Chege (widow), Lucia Njeri Waweru (daughter – 12 years), Hannah Nyakio Waweru (daughter – 11 years) and Francis Ngugi Waweru (son – 5 years). The petitioners listed several properties that they claimed belonged to the estate of the deceased (This court will refer to the properties in detail later in the ruling). The court issued the grant of letters of administration intestate to the Petitioners on 20<sup>th</sup> April 2004.

When Lucia Njeri Ngugi, the mother of the deceased (the objector) became aware that the grant of letters of administration intestate in respect of the estate of the deceased had been issued to the Petitioner, she, on 24<sup>th</sup> June 2004 filed summons pursuant, *inter alia*, to the provisions of **Sections 76 and 97** of the **Law of Succession Act** seeking to have the said grant revoked on the grounds that the proceedings leading to the issuance of the said grant were defective in substance.

The Objector further stated that the grant was obtained either fraudulently or by concealment from the court of facts that are material to the case. The summons was supported by the annexed affidavit of the Objector. The Objector, *Inter alia*, claimed that at the time of his death the deceased was estranged from

the 1<sup>st</sup> Petitioner. She deponed that the 1<sup>st</sup> Petitioner had returned to her maiden home at the time of the death of the deceased. She disputed the contention by the Petitioners that the deceased solely owned all the properties that are listed as comprising his estate. It was the Objector's contention that a substantial portion of the properties listed as belonging to the estate of the deceased were in fact family property that the deceased held in common with other members of his family, that is, including his siblings. The 1<sup>st</sup> Petitioner, Lucy Wahu Chege, filed a replying affidavit denying the allegation that she was estranged from the deceased at the time of the death of the deceased. She explained that the reason why she left the matrimonial home was due to insecurity at Undiri area at the time. She denied the suggestion put forward by the Objector that the properties listed in the petition belonged to the family of the deceased. She was emphatic that the properties in question belonged to the deceased. She was of the view that the court should grant her wish to administer the estate of the deceased.

On 26<sup>th</sup> October, 2004, Koome J, after considering the fact that the issues in dispute appeared basically to be whether the properties listed as owned by the estate of the deceased belonged to the said estate or were owned by members of his family, she ordered the Petitioners to file an application for confirmation of grant. She further ordered the Objector, if she was dissatisfied with the mode of distribution of the estate of the deceased proposed by the Petitioners, to file an affidavit of protest setting how, she (the Objector) proposes that the estate of the deceased should be distributed.

The Petitioners, in compliance with the order issued by the court, filed the application for confirmation of grant on 16<sup>th</sup> November 2004. In the said application, the 1<sup>st</sup> Petitioner listed herself and her children as the sole beneficiaries of the estate of the deceased. She proposed to distribute the assets that she claimed comprised the estate of the deceased as follows:-

- (a) Undiri Farm Scheme Plot No 147 – Measuring approximately 7 acres – to herself – Lucy Wahu Chege**
- (b) Isuzu Motor Vehicle Registration No. KZB 135 – to herself – Lucy Wahu Chege**
- (c) Kikuyu/Kikuyu/Block 1/68 – to be registered in her name – Lucy Wahu Chege and Paul Mburu Chege as Joint Trustees.**
- (d) Plot No 9 Kikuyu – Kidfarmaco – Simon Kuria Ngugi**
- (e) Plot No 40A Kidfarmaco – Lucy Wahu Chege and Paul Mburu Chege as joint trustees**
- (f) Plot No. 19 Kahuho – Simon Kuria Ngugi**
- (g) A/c No. 100283326 at Kenya Commercial Bank Kikuyu Branch – Lucy Wahu Chege**

The Objector filed an affidavit in protest. She contended that the parcels of land known as Plot No 19 Kahuho Market, Plot No 40A Kidfarmaco, Plot No 9 Kidfarmeco and L.R No. Kikuyu/Kikuyu Block 1/68 were held in trust by the deceased and Simon Kuria Ngugi in trust for other members of the family. It was the Objector's case that the said parcels of land belonged to her deceased husband (the father of the deceased) before the same were transferred to the deceased and his brother.

The issue for determination by this court is whether the four properties belong to the family of the deceased as claimed by the Objector or the same belong to the estate of the deceased and therefore available for distribution to the deceased's beneficiaries. From the evidence on record, it was evident that the claim by the Objector that the four parcels of land belonged to the family of the deceased is not supported by any evidence. It was apparent that the four parcels of land were acquired by the deceased and his brother either by being allocated the same or by purchasing the same. For instance, Plot No. 40A Kidfarmaco was allocated to the deceased and Simon Kuria Ngugi on 13<sup>th</sup> December 1997 by the Town Council of Kikuyu. Plot No. Kikuyu/Kikuyu Block 1/68 was purchased by the two brothers from one Stephen Kageche Njuguna vide a sale agreement dated the 25<sup>th</sup> of May 1998. On this parcel of land is erected twelve (12) two-bedroomed flats. The development on the parcel of land is valued at Kshs.11.2 million.

As regard Plot No 9 Kidfarmaco, the same was allocated to Anne Mumbi Hinga by Kiambu County Council on 27<sup>th</sup> August 1990. She sold the plot to the deceased and Simon Kuria Ngugi on 16<sup>th</sup> July 1998. However, there is some truth in the claim by the Objector that Plot No. 19 Kahuho had been

allocated to her late husband. This is because the letter of allotment in respect of the said parcel of land was issued by the then Kiambu African District Council on 22<sup>nd</sup> August, 1960. This parcel of land is again registered in the name of the deceased and his brother Simon Kuria Ngugi.

In her submission, the Objector stated that since the said properties were jointly registered in the name of the deceased and Simon Kuria Ngugi, then the said properties devolved to the later upon the death of the deceased pursuant to **Section 102(1)** of the **Registered Land Act**. **Section 102(1)** of the **Registered Land Act** provides as follows:-

***“where the land, lease or charge is owned jointly, no proprietor is entitled to any separate share in the land, and consequently –***

***(a) Dispositions may be made only by all the joint proprietors; and***

***(b) On the death of a joint proprietor, his interest shall vest in the surviving proprietor or the surviving proprietors jointly.”***

The Petitioners contend that the said properties are available for distribution since they are part of the estate of the deceased.

Having carefully considered the facts of this case, it is clear that the Objector established to the required standard of proof on a balance of probabilities that the parcel of land known as LR No. Kikuyu/Kikuyu Block 1/68 is registered under the Registered Land Act. The said parcel of land is jointly registered in the name of the deceased and Simon Kuria Ngugi. Applying **Section 102(1)** of the **Registered Land Act**, upon the death of the deceased, the said parcel of land remained the property of the surviving proprietor. In the circumstances therefore, the said property is not available for distribution as part of the estate of the deceased.

As regard the other three properties, i.e. Plot No. 9 Kikuyu Kidfarmaco, Plot No. 40A Kidfarmaco and Plot No 19 Kahuho, the same were jointly owned by the deceased and his brother Simon Kuria Ngugi. The said properties were however not registered under that **Registered Land Act**. The shares of the deceased in the said properties are available for distribution as part of the estate of the deceased.

In the premises therefore, the properties that compromise the estate of the deceased shall be distributed as follows:-

***(I) L.R. No. Undiri Scheme/147 measuring 7 acres or there about – shall be held by Lucy Wahu Chege and Paul Mburu Chege in trust for Lucy Wahu Chege and all the children of the deceased.***

***(II) Motor Vehicle Registration No. KZB 135 – shall be inherited by Lucy Wahu Chege.***

***(III) Account at Kenya Commercial Bank, Kikuyu A/C No. 100283326 shall be inherited by Lucy Wahu Chege.***

***(IV) Plot No. 9 Kikuyu Kidfarmaco***

***(V) Plot No. 40A Kidafarmaco***

***(VI) Plot No. 19 Kahuho***

***Lucy Wahu Chege and Paul Mburu Chege shall inherit the half share in each of the above properties in trust for the widow and the children of the deceased.***

The parcel of land known as LR No. Kikuyu/Kikuyu Block 1/68 is not available for distribution since it devolved to Simon Kuria Ngugi upon the death of the deceased. Since this is a family dispute, there shall be no order as to costs. Each party shall bear their costs.

**DATED AT NAIROBI THIS 2<sup>ND</sup> DAY OF SEPTEMBER, 2011.**

**L. KIMARU**  
**JUDGE**

