



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAKURU

SUCCESSION CAUSE NO. 377 OF 2009

IN THE MATTER OF THE ESTATE OF NJUGUNA NGENGI - DECEASED

JACKLINE WANGUIOBJECTOR

VERSUS

REBECCA WANJIKU1ST PETITIONER

VERONICA MUTHONI2ND PETITIONER

JUDGMENT

The Petitioner Rebecca Wanjiku and Veronica Muthoni were the 1st and 3rd wives of the late Captain (Rt.) G. G. Njuguna who died in the Post Election Violence (PEV) on 28th January, 2008, following the disputed general elections of December, 2008. The Objector Jackline Wangui was the 2nd wife.

When this matter was heard before me on 5th October, 2010 and 2nd November, 2010, it became clear that the 1st wife Rebecca Wanjiku deserted the deceased in 1978 leaving four (4) children behind and is said to have cohabited or married another man to whom she bore three other children. The 3rd wife Veronica Muthoni had also deserted the deceased for over 20 years before his death. This prompted Objector's witness (DW2) Charles Thairu Wachira to testify that the deceased, whom DW1 described as his best or close friend, had confided in him that he had only one wife **Jackline Wangui** but eleven (11) children which figure included the children from both the Petitioners and the Objector.

However when the Petitioners testified it became quite clear that though the petitioners claimed that the deceased had maintained contact with them, such contacts were far and between as for instance when one of the daughters of Rebecca Wanjiku got married, so that at the time of his death, the only wife he resided with was the Objector. So one of the questions to be determined is what is the status of the Petitioners vis-à-vis the deceased.

In absence of either a statutory divorce (*through the courts*) or customary divorce through the clan elders and return of dowry, the Petitioners, notwithstanding their wanderings and cohabitation elsewhere, are lawful wives of the deceased and have under Section 66 of the Law of Succession Act (*Cap 160 Laws of Kenya*) preference in the administration of his estate.

Having heard, and considered the evidence of both the Objector and the Petitioners, their point of departure is not who should administer the deceased's estate, but rather how should that estate be distributed or divided among them. Being of this opinion and in exercise of the discretion conferred upon this court by Section 56(1)(b) and 66 of the Law of Succession Act, I appoint

- (1) *Jackline Wangui*
- (2) *Rebecca Wanjiku and*
- (3) *Veronica Muthoni*

to be joint administrators to the estate of the deceased G. G. Njuguna Ngugi.

Having resolved the question of who will administer the estate, the next question is how the estate should be distributed. It is also necessary to determine this question at this stage because both the Objector and the Petitioners led evidence as to the particulars of the properties of the deceased and also how they should be distributed.

Before determining the mode of distribution it is also necessary to first determine who are the beneficiaries of the estate. As already established, the deceased had three wives, or in the language of Section 40 of the Law of Succession Act had three houses.

1st House comprised:

(a) *REBECCA WANJIKU – 1st widow had the following children:*

- (i) *Rehema Njoki Njuguna - 38 years*
- (ii) *Francis Miruri Njuguna – 35 years*
- (iii) *Lydia Wanjiru Njuguna – 34 years*
- (iv) *Norman Ng'ang'a Njuguna – 32 years*

2nd House:

(b) *JACKLINE WANGUI – 2nd widow had the following children:*

- (i) *Grace Njoki Njuguna*
- (ii) *Eunice Wanjiru Njuguna*
- (iii) *Ruth Nyarwathi Njuguna and*
- (iv) *Louis Ngengi Njuguna , and*

3rd House:

(c) *Veronica Muthoni 3rd widow had the following children:*

- (i) *Samson Ngengi Njuguna*
- (ii) *Harrison Wanyoko Njuguna*
- (iii) *Francis Muiruri Njuguna*

All of the children are over 18 years of age or adults.

According to the evidence adduced by both the Objector and the Petitioners, the deceased had various properties, land, bank accounts and movable or (*personal*) assets. Land was comprised in the following properties:

1. *MOLO/MOLO BLOCK 1/329 KIAMBIRIRIA comprising approximately 0.0456 Ha.*
2. *MOLO/MOLO BLOCK 1/315/KIAMBIRIRIA measuring approximately 2.106 Ha.*
3. *MOLO/MOLO BLOCK ½ KIAMBIRIRIA comprising 1.964 Ha.*
4. *MOLO/MOLO BLOCK 1/1/ KIAMBIRIRIA measuring 1.792 Ha.*
5. *MOLO/MOLO BLOCK 1/315 KIAMBIRIRIA comprising approximately 1.441 Ha.*
6. *LR NO. 533/436 GRANT NO. IR 30450 measuring approximately 0.2118 Ha.*
7. *MOLO TOWNSHIP/BLOCK 1/217 leasehold property from Government.*

8. MOLO/MOLO BLOCK 1/218 leased property on which is erected-

(a) Petrol Service Station leased to Kobil

(b) Go-down

(c) Shop 1 and shop 2

Other Assets

9. Debtors Shs.48,000/-

10. Accounts with Equity Banks, Barclays Bank and Standard Chartered Bank

11. Motor vehicles:

(i) Subaru Leone Registration No. KAK 667H, and

(ii) Peugeot Registration Number KVD 649

12. Shares (if any)

This was a polygamous estate. Section 40 of the Act provides:

“40 (1) Where an intestate has married more than once under any system of law permitting polygamy his personal and household effects and the residue of the net intestate shall first instance be divided among the houses according to the number of children in each house, but also adding any wife surviving him as an additional unit to the number of children.

(2) The distribution of the personal and household effects and the residue of the net intestate within each house shall then be in accordance with the rules set out in Section 35 to 38.”

The Objector, Jackline Wangui, as well as the Petitioners were agreed on the equal distribution of the deceased's net intestate. The Objector however prayed in her evidence that the deceased's house where he met his death and the land surrounding the home be given to her and her children.

The Petitioners on their own behalf and on behalf of their children prayed in their evidence and submissions that the area around the house of the deceased be set apart as a family home because it was the home where they grew and were brought up by the Objector and that despite the differences between their father and the Petitioners, is the only place they knew as home and they should feel welcome to visit and stay at any time they wished to do so.

I think the Petitioners' prayer is a noble one, but is not practicable. Even if they were not divorced this is a home they deserted for a combined period of 50 years, (30 years by Rebeca Wanjiku) and (20 years by Veronica Wambui Muthoni), and they cannot fairly pretend to have nay fond memories of it and only after their husband's death. This is obviously a home which to Jackline Wangui Njuguna, the Objector continued to improve and maintain and no less contributed to the expansion of the land surrounding it from the original home of a white settler to 16 ½ acres at the time of the demise of the deceased.

Taking into account the above considerations and the provision of Section 35(1) of the Law of Succession Act the personal and household effects of the deceased belong to the Objector as the wife who was residing with the deceased at Kiambiriria at the time of his demise. She (*the Objector*) has also a life interest to the house and land area surrounding it in terms of Section 35(1)(b) of the said Act.

Neither Objector nor the Petitioners gave the exact number of acres or hectares occupied by the deceased's homestead. Looking however at the Petitioners' Replying Affidavit (*sworn on 26th May 2011*) by Veronicah Muthoni and the photographs attached thereto the homestead covers extensive grounds of perhaps 2 or more acres. It is only but both fair and fitting that the house and the surrounding area should

remain under the ownership and control of the Objector, the wife with whom the deceased lived through tribulations, including detention and jail terms before his unfortunate demise.

Subject then to the said conclusions the parcels of land in the area known as Kiambiriria where the Petitioners lived before their desertion of the deceased, and where their children with the deceased continued to live and grow up with Objector and the deceased, should for the sake of the deceased's children and also the requirements of such 40(1) of the Act that the lands at Kiambiriria be divided in terms of the said provision.

The first and second house having been comprised of four children each and their respective mothers should each be entitled to 5 units of the Kiambiriria land. The 3rd house comprised of four children each and their respective mother would be entitled to 4 units of Kiambiriria land. To ascertain the area to which each house is entitled the land area would be multiplied by the number of units in each house divided by the total number of units.

Applying the said formula, the 1st and 2nd houses would each be entitled to five decimal two five (5.25) acres and the 3rd house to six (6) acres.

It is up to each house to determine how to distribute their or the share of each house. Some married daughters of the deceased may renounce their share, and unless they do so, the share of each house shall be divided equally among the children of that or each house.

On the Molo Township properties (i) *Title Number Molo Township Block 1/218* (ii) *Title Number Molo Township Block 1/217* which are both leased shall be registered in the names of the three widows, or houses and the leases shall be amended accordingly and the rents derived therefrom shall be deposited into an interest earning account opened in the joint names of the objectors' and Petitioners' Advocates in a reputable bank and such rents shall be paid out by the said advocates quarterly in every year for the next three years by which time the administrators may agree to dispose of the properties and sharing of the proceeds, in the same proportions as for the Kiambiriria properties. The secured assets in the form of Bank balances in Equity, Barclays, or Standard Chartered Banks and shares in any of the public corporations when established shall be shared in the same manner.

In summary therefore,

(i) I appoint the Objector and Petitioners joint administrators of the state the deceased estate NJUGUNA NGENGI;

(ii) The land of the deceased at Kiambiriria is distributed to 1st and 3rd houses 5.25 acres and the 3rd house 6 acres.

(iii) The township properties in Molo Town shall continue to be in their lease terms and may be reviewed and/or extended in the names of the joint administrators. The proceeds of rent from the said properties shall be deposited by each tenant to the joint account to be opened in the names of the Objector and Petitioners' Advocates with a reputable Commercial Bank in Nakuru.

(iv) That moveable asset of the deceased that is to say the motor vehicles be sold as where they are basis and the proceeds be distributed in the same way as the Kiambiriria Properties.

(v) The secured assets in the form bank balances with Equity, Barclays Standard Chartered or any other bank when established shall be distributed in the same manner as the Kiambiriria properties

Each party shall bear its own costs.

There shall be orders accordingly.

Dated, signed and delivered at Nakuru this 12th day of October 2011

M. J. ANYARA EMUKULE
JUDGE