



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NYERI Succession Cause 527 of 2008

**IN THE MATTER OF THE ESTATE OF LUKA NDERITU NDUHIU ALIAS LUKAH NDERITU
NDUHIU - DECEASED**

JOHN BAPTISTA WAMUNYU.....APPLICANT

VERSUS

ROSEMARY WAMAHIGA WAMBUI.....RESPONDENT

RULING

Luka Nderitu Nduhiu died on 31st July, 1994. On the 16th day of January 2009, grant of Letters of Administration intestate was given in the joint names of JOHN BAPTISTA WAMUNYU and ROSEMARY WAMAHIGA WAMBUI, hereinafter referred to as the Applicant and Respondent respectively. The Applicant sought for the confirmation of the grant in the summons dated 31st August 2009. The Respondent filed an affidavit of protest to oppose the application. When the matter came up for directions, learned advocates appearing in the matter recorded a consent order in which they agreed to have the summons and the protest determined by affidavit evidence and written submissions.

In her affidavit of protest, Rosemary Wamahiga Wambui is of the view that the grant should not be confirmed because the mode of distribution does not recognize that her deceased mother has an equal right to the Estate of the deceased. She proposed that the parcel of land known as TETU/KARAIHU/335 measuring 3.4 acres should be shared equally between the children of Margaret Wambui, deceased and John Baptista Wamunyu.

On his part, the Applicant proposed in the schedule of distribution at paragraph 5 of his affidavit to have the aforesaid land shared as follows:

John Baptista Wamunyu - 2.3 acres

Margaret Wambui, deceased as represented by:

Luka Nderitu Wambui

John Wamunyu Wambui 1.1 acres

Grace Wanjiku Wambui

Beatrice Wanjiru Nderitu, Jane Wangari Ndungu, Luka Nderitu Wambui, Grace Wanjiku Wahome each filed an affidavit in support of the schedule of distribution proposed by the Applicant. The Respondent stated that the land entitled to Daniel Wanjogo, deceased, reverted to the Estate since he occupied the land as a mere licensee. The Respondent challenged the agreement annexed to the affidavit of Grace Wanjiku Wahome, saying that she did not execute the same and neither did she attend the family meeting which gave rise to that meeting agreement distributing the Estate.

I have considered the grounds set out on the face of the Summons for Confirmation of Grant dated 31st August 2009 plus the facts deponed in the affidavits filed in support and the averments in the affidavit of protest. I have further taken into account the written submissions. It is apparent from the material placed before me that the asset of the Estate which is due for distribution in this succession cause is the parcel of land known as TETU/KARAIHU/335. There is no dispute that though the land was registered in the name of Luka Nderitu Nduhiu, deceased, his brother Daniel Wanjogo, deceased, occupied a portion of it. The two brothers are both deceased. It is the submission of the Applicant that Luka Nderitu Nduhiu, deceased got himself registered as the proprietor of the aforesaid in trust for himself and his brother, the late Daniel Wanjogo. It is said Luka was entitled to 2.2 acres whereas Daniel Wanjogo was entitled to 1.2 acres. The Applicant herein is the son of Luka Nderitu, deceased while the Respondent is a daughter of Margaret Wambui, deceased. Basically the Respondent is the grand- daughter of the deceased.

It is the submission of the Applicant that the family met giving rise to the agreement which was executed before H. K. Ndirangu Advocate on 25th July 2009. I have perused the aforesaid. The same is signed by the Applicant Luka Nderitu Wambui on behalf of the family of the late Margaret Wambui Nderitu, Grace Wanjiku Wahome, Beatrice Wanjiru Nderitu and Jane Wangari Ndungu. In the agreement the children of the deceased are identified as follows:

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|----|----------|----------|----------|
| 1. | John | Baptista | Wamunyu. |
| 2. | Grace | Wanjiku | Wahome. |
| 3. | Beatrice | Wanjiru | Nderitu |

- | | | | |
|----|----------|---------|-----------|
| 4. | Jane | Wangari | Ndungu. |
| 5. | Margaret | Wambui, | deceased. |

It is also stated that Margaret Wambui passed away on 30th September 1987 leaving behind the following children:

- | | | | |
|----|------|----------|-----------|
| 1. | Luka | Nderitu | Wambui |
| 2. | | Rosemary | Wamahiga. |
| 3. | | Grace | Wanjiku. |
| 4. | | John | Wamunyu. |

The agreement also indicates that Luka Nderitu Nduhiu, deceased was entitled to 2.2 acres while Daniel Wanjogo Wamunyu, deceased was entitled to inherit 1.2 acres comprised in L.R. TETU/KARAIHU/335. The family were also in agreement that Daniel Wanjogo had bequeathed his portion, that is, 1.2 acres before he died to John Baptista Wamunyu. What was left is the portion due to the Estate of Luka Nderitu Nduhiu, deceased measuring 2.2. acres. The family agreed that the same be shared equally between John Baptista Wamunyu and Luka Nderitu Wambui, representing the family of Margaret Wambui, deceased. In short the Applicant is to get 1.1 acres which is equivalent to what was given to the Estate of Margaret Wambui, deceased. The Respondent does not dispute the contents of the agreement. Her only objection is that she was not part of the meeting. She claimed her brother, Luka Nderitu Wambui was coerced to sign the agreement. I do not think this last allegation is true, because Luka Nderitu Wambui has himself come forward and swore an affidavit in support of the summons for confirmation of grant. He even deponed that he participated in marking the boundaries separating each portion on the ground. After a careful consideration of the material placed me, I am convinced that the protest has no merit. The allegations contained therein cannot stand the test of law. The mode of distribution conforms with the provisions of the law and is in consonance with the wishes of the family and those of the deceased.

In the end I dismiss the protest and confirm the grant as prayed in the summons for confirmation of grant dated 31st August 2009. This being a family dispute, I direct each party to meet its own costs.

Dated and delivered at Nyeri this 26th day of February 2010.

J. K. SERGON

JUDGE