



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MERU
Succession Cause 32 of 2000

IN THE MATTER OF THE ESTATE OF JOHN MUTUERANDU (DECEASED)

RICHARD NKONGE MUGAMBI PETITIONER

VERSUS

AGNES NCHORO OBJECTOR

JUDGMENT

Richard Nkonge Mugambi petitioned for grant of letters of administration intestate in respect of this estate on 17th February 2000. In that petition, he described himself as the son of the deceased. In the affidavit in support of the petition, he listed those who survived the deceased as, himself the son, Grace Ngiri Mwarania, Zipporah Rufas and Agnes Nchoro, daughters. A grant was issued to Nkonge on 16th January 2001. That grant on his application was confirmed on 15th April 2002. The only property of the deceased *Igoji/Mweru/1/324* on confirmation of that grant was distributed with Aphaxard Gitonga getting 30 points and Nkonge getting the balance of the land. Agnes Nchoro by summons dated 17th September 2004 sought revocation of that grant on the basis that Nkonge was not a son of the deceased amongst other reasons. The grant was revoked by the court on 1st July 2009. There are also proceedings in this court file over criminal case

against Nkonge where he was charged with the offence of swearing false affidavit contrary to Section 36 of the Penal Code on the 1st count. On the 2nd count, he was charged with the offence of obtaining the title deed of the deceased in this estate by false pretences that he was a beneficiary contrary to Section 320 of the Penal Code. He was convicted of the two counts before the lower court. It ought to be noted that following the confirmation of the grant, Nkonge distributed the deceased estate with two parcels of land coming out of the original title. Parcel number *Igoji/Mweru/1/1233* is registered in the name of Aphaxard Gitonga. Parcel number *Igoji/Mweru/1/1234* is registered in the name of Nkonge. Following the revocation of the grant issued to Nkonge, a fresh grant was issued to Nchoro on 4th May 2010. Nchoro, by summons dated 24th November 2009, sought for parcel numbers 1233 and 1234 to be registered in her name. It is clear that the deceased was survived by three daughters, namely, Zipporah Kathuguci, Grace Ngiri and Agnes Nchoro. When summons for confirmation came for hearing, Zipporah and Grace objected to the mode of distribution suggested by Nchoro. The court ordered for *viva voce* evidence to be tendered in respect of that objection. Both Zipporah and Grace objected to that mode of distribution suggested by Nchoro on the basis that they all should inherit their deceased father's land equally because they are all children of the deceased. It came out clearly that both Zipporah and Grace had supported Nkonge in his pursuit to inherit their father's property even though Nchoro and her children were in occupation of the deceased land. At the criminal trial of Nkonge, both Zipporah and Grace supported Nkonge and gave evidence in his defence. Zipporah stated in the criminal case that the deceased land belonged to Nkonge. Grace stated that Nkonge had buried the deceased and that the deceased had given Nkonge his land. As stated before, Nkonge was found guilty as charged on both counts. During the hearing of this succession, both Zipporah and Grace accepted that Nkonge was not the son of the deceased as he had described himself in the petition. Zipporah, further in evidence, accepted that she had inherited from her late husband 10 acres of land on her matrimonial land. She occupies that land together with her children. Grace also stated that she had been left with 5 acres by her late husband which she occupies with her children. Nchoro on her part stated that she was unmarried and resides on the deceased property and, as we now know, is registered in the names of Nkonge and Gitonga. Nchoro said that she resides on that land with her children and was on that land when the deceased passed away. The deceased land was said to be less than 4 acres. The evidence of Nchoro being unmarried was uncontroverted. Nchoro said that she has 5 children who reside on the land with her. I had an opportunity to observe Zipporah, Grace and Nchoro when they gave evidence. I formed the opinion from observing the parties that Zipporah and Grace were objecting to Nchoro in inheriting their father's land not because they wanted to inherit but perhaps acting as proxies for Nkonge and thereby wanting to displace Nchoro and her children. As Zipporah and Grace gave evidence, they were very confrontational when they were questioned about Nkonge's claim over deceased land. It is clear that they themselves have sufficient land at their matrimonial homes. It became clear that their objection to Nchoro inheriting the land was much more than they stated in their evidence. I make a finding that the deceased land should be inherited solely by Nchoro. However, it ought to be stated that parcel number 1233 registered in the name of Aphaxard Gitonga is now charged to the Co-operative Bank of Kenya for a loan of Kshs. 2million. The charge was registered on 7th June 2007. It is not clear whether that loan has been repaid. Because of that uncertainty, I will, at this stage, issue a preliminary decree over parcel number *Igoji/Mweru/1/1234* which is registered in the name of Nkonge. In respect of parcel number 1233 which is charged with the Co-operative Bank of Kenya, a notice to show cause will be issued to both Gitonga and the Co-operative Bank of Kenya to show cause why the property should not be registered in the name of Nchoro. I grant the following orders as a preliminary decree.

- 1. Transfer and rectification of parcel number *Igoji/Mweru/1/1234* to be registered in the name of Agnes Nchoro. To that end, leave is hereby granted to the Land Registrar to dispense with the original title being availed.**
- 2. The Deputy Registrar of this court should facilitate the service upon Co-operative Bank Kenya Ltd and upon Aphaxard Gitonga of a notice to show cause why parcel number *Igoji/Mweru/1/1233* should not be transferred to the name of Nchoro. The Deputy Registrar shall also serve upon the Co-operative Bank of Kenya Ltd and Gitonga a copy of this judgment.**
- 3. The Co-operative Bank of Kenya Ltd and Aphaxard Gitonga shall appear to show cause for a date to be given at the reading**

of this judgment.

4. There shall be no orders as to costs.

Dated and delivered at Meru this 26th day of July 2010.

MARY KASANGO

JUDGE