



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAKURU

SUCCESSION CAUSE 577 OF 2003

IN THE MATTER OF THE ESTATE OF ONESMUS MBUGUA NGANGA (DECEASED)

JUDGMENT

The late Onesmus Mbugua Nganga (*deceased*) died intestate on 31st July 2003 at the age of 78 years. The deceased was polygamous and was survived by beneficiaries from two houses. Mary Wairimu Mbugua (*representing the 2nd house*) and Paul Mwangi Mbugua (*representing the 1st house*) applied for the letters of administration. The petitioners indicated in the affidavit in support of the petition for letters of administration that the deceased was survived by a first house comprising of Paul Mwangi Mbugua, Joseph Kuria Mbugua, James Njoroge Mbugua, and Joel Kamau Mbugua. The second house comprised of Mary Wairimu Mbugua, David Kamau Mbugua, Josephat Kuria Mbugua, Wilson Mwangi Mbugua and Daniel Mwangi Mbugua. The grant of letters of administration was issued to both petitioners on 29th March 2004.

The assets belonging to the deceased as at the date of his death are as follows:

- 1. Jogoo plots No. 130, 199 and 401.**
- 2. Mau Summit/Sachangwani Block 2.**
- 3. Molo Mau Summit Block 1/186 (Twin Peak)**
- 4. Rironi Farm 1 acre**
- 5. Cash in National Bank A/c No. 0120102141700 approximately Kshs 300,000/=**
- 6. 58 ordinary shares with Barclays Bank of Kenya.**
- 7. Shares with Central Farmers Traders Co. Ltd.**

On 21st November 2006, the 1st Petitioner Mary Wairimu filed the summons for the confirmation of the grant. She sought for the distribution of the deceased's assets. The 2nd petitioner Paul Mwangi filed an affidavit of protest proposing a different mode of distribution of the deceased's assets among the beneficiaries. On 29th June 2007, the court gave directions that the issue of distribution which is the only issue in dispute be determined by way of oral evidence. Thus, each of the petitioner's gave evidence in support of their proposed mode of distribution.

The disagreement by both parties is on the mode of distribution of the deceased estate. The protester

introduced other beneficiaries, namely; Veronica Wangui, Siporah Waithira and Benson Chege. Mary Wairimu Mbugua opposed the additional beneficiaries proposed by the protester. I find that no affidavit was filed by the additional beneficiaries to confirm the claim put forward by the protester. Moreover, this petition was filed jointly by both protester and the 1st petitioner; the beneficiaries proposed by protester were not included in that joint petition. For this reason I will disregard the additional beneficiaries who have been included as an afterthought by the protester.

What is clear from their evidence is that during the deceased's life time he had settled the family of his first wife on plots Nos. 130, 199 and 401 namely Jogoo Plots measuring about 2¹/₄ acres. The second wife is settled at Mau Summit Sachangwani Block 2 on two plots measuring 50m x 100m which combined would be a quarter of an acre. There is also another plot known as Molo Mau Summit Block 1/186 which is also a small plot.

This matter should be determined according to the provisions of **Section 40** of the **Law of Succession Act** which provides as follows:

“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 estate shall, in the 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.”

See also the case of **Rono vs. Rono & Another [2005] eklr** where the Court of Appeal held:

“Section 40 of the Act which applied to the estate makes provision for distribution of the net estate to the ‘houses according to the number of children in each house, but also adding any wife surviving the deceased as an additional unit to the number of children’. A “house” in a polygamous setting is defined in section 3 of the Act as a “family unit comprising a wife ... and the children of that wife”. There is no discrimination of such children on account of their sex.”

The only difficulty in this matter is to arrive at a correct and equitable distribution for each household with a mathematical precision. The proportionate share is further compounded by the fact that the deceased already settled the two households at their respective portions of land during his lifetime. The estate is also of negligible value and subjecting it for professional valuation will further deplete it. It will also not be suitable to move the beneficiaries from where they have settled as that will involve the inconvenience as well as the cost of re-location. Taking into consideration all the relevant matters in this succession cause it is in the interest of justice that the deceased's estate should be shared as follows:

- (I) Jogoo Plot No. 130, 199 and 401 to be shared among members of the first household.***
- (ii) Mau Summit Sachangwani Block 2 and Molo Mau Summit Block 1/196 be shared among the members of the second house.***
- (iii) Rironi (1 acre) farm be shared among the members of the second house. (This will bring up their acreage of land close to that of the 1st house).***
- (iv) Cash in National Bank should be shared equally among the two houses.***
- (v) Shares with Central Farmers Traders Co. Limited should be shared equally between the two houses.***
- (vi) 58 ordinary shares with Barclays Bank of Kenya should go to the widow of the deceased Mary Wairimu Mbugua and so are livestock and other personal effects of the deceased.***

This being a family matter each party should bear their own costs of this litigation. The letters of administration is confirmed in the names of the petitioners who shall hold the properties for their respective houses.

Judgment read and signed on 30th day of January 2009

M. KOOME

JUDGE