



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAKURU
SUCCESSION CAUSE 125 OF 1993
IN THE MATTER OF ESTATE OF B N G - DECEASED

T W NAPPLICANT

VERSUS

R M NRESPONDENT

JUDGMENT

B N G (*hereinafter referred to as the deceased*) died on 29th June 1989. On 19th April 1993, G N N, a son of the deceased, petitioned the court for the grant of letters of administration intestate in respect of the estate of the deceased. In the said petition, the beneficiaries and successors of the estate of the deceased were listed as: T W N (*widow of the deceased*), F G N (*son of the deceased*), G N N (*the petitioner*) and R W N, (*daughter of the deceased*). The only property comprised of the estate of the deceased was listed as Plot No[particulars withheld](*hereinafter referred to as the suit property*). On 17th January 1995, letters of administration in respect of the estate of the deceased were issued to the said G N N. On 5th July 1995, the said G N N made an application for the confirmation of the said grant of letters of administration issued to him. In the said application, the petitioner proposed to distribute the suit property, [particulars withheld] as follows: T W N was to inherit one (1) acre, F G N was to inherit five and a half (5½) acres, G N N was to inherit five and a half (5½) acres, while R W N was to inherit four (4) acres. The letters of administration were duly confirmed by the court on 10th July 1995.

The petitioner G N N died on 13th June 1996 before he could distribute the estate of the deceased. On 11th May 1998, the widow of the deceased, T W N made an application to the court to substitute the deceased petitioner for the purpose of distribution of the estate of the deceased to the beneficiaries. The application was allowed. However, in a strange move, instead of distributing the estate of the deceased as earlier confirmed by the court, the widow of the deceased distributed the suit property [particulars withheld] comprising the estate of the deceased as follows: T W N – one (1) acre, F G N – five and a half (5½) acres, M W N (*a new dependant that was not listed as a dependent of the deceased in the petition*) – two and a quarter (2¼) acres, R M K (*the widow of G N N*) – two and a quarter (2¼) acres and R W N – four (4) acres. A new confirmation of grant was issued to the said T W N on 8th July 1998. Due to complaint made by the widow of G N N, the said letters of administration in respect of the deceased's estate issued and confirmed to T W N, were cancelled and revoked by the court on 27th September 1999. On 14th May 2005, the court appointed T W N and R M K (*the widow of G N N – deceased*) as joint

administrators of the estate of the deceased for the purpose of distribution of the suit property that comprised the only asset left by the deceased.

Meanwhile, upon the death of G N N, R M K, his widow petitioned the court, vide **Nakuru HC Succession Cause No.216 of 1996** to be granted letters of administration in respect of the said deceased's estate. One M W G (*the objector*) objected to the grant of the said letters of administration to R M K on the ground that she was also a beneficiary to the said estate in her capacity as a second wife to G N N - deceased. After hearing the objection proceedings, Rimita, J (*as he was then*), dismissed the objection proceedings and found that the objector was not a wife to the said deceased. The material part of his judgment states as follows:

“The objector could have been a girlfriend to the deceased. It was not more than that. She exploited the differences between the deceased's mother and the petitioner. The objector was living in Nakuru town and did not call any of the deceased's friends or colleagues to confirm her case ... there is no way the objector would have been married for a period of about 21 years to the deceased without the public and the deceased's colleagues knowing.”

After the dismissal of the objection, R M K was granted letters of administration in respect to the estate of her deceased husband, G N N.

Upon T W N and R M K (*also known as R M N*) being granted letters of administration in respect of the estate of the deceased in these succession proceedings, the court directed the two administrators to file written submissions setting out their respective proposals in regard to the manner which the estate of the deceased ought to be distributed. According to T W N (*hereinafter referred to as the applicant*), the distribution of the estate of the deceased should be reconsidered from the earlier distribution proposed by G N N – deceased. She proposes that the parcel of land comprising the suit property should be distributed as follows: T W N – two (2) acres, F G N – six (6) acres, R W N – four and a half (4½) acres, P W M (*allegedly another daughter of the deceased whose name did not appear in the original list of beneficiaries of the deceased*) – one and a half (1 ½) acres, and R M K together with B N N – two (2) acres. On her part, R M K (*hereinafter referred to as the respondent*) did not wish the court to depart from the original proposal on distribution made by her late husband, G I N N. It was her case that the mode of distribution of the suit property was agreed by the family to an extent that the Ol Kalou Land Control Board had on 8th September 1995 granted consent for the subdivision of the suit property in terms of the original confirmation of grant issued by this court on 10th July 1995 to G N N. It was the respondent's case that were it not for the death of the said G N N, the said parcel of land would have been distributed in the manner earlier proposed by the family and adopted by the court when it issued the said original confirmation of grant.

I have carefully considered the rival position put forward by the applicant and the respondent in regard to the manner which the suit property shall be distributed. As stated earlier, the applicant and the respondent were appointed administrators of the estate of the deceased for the purpose of the distribution of his estate to his beneficiaries. The only asset of the estate of the deceased is the suit property i.e. [particulars withheld]. The said parcel of land measures 6.2 hectares (*approximately 15.3 acres*). According to the evidence on record, the title deed in respect of the suit parcel of land was issued to the applicant, T W N on 17th September 1998. It was apparent that the applicant was issued with the said title after the court substituted her as the administrator of the estate of the deceased in place of G N N who had died. The said letters of administration and confirmation of grant issued to the applicant was cancelled and revoked by the court. The applicant is therefore holding the said title in trust for the beneficiaries of the estate of the deceased. The order issued by this court in regard to the distribution of the suit property shall therefore be directed at the applicant, who is holding the title of the suit property on behalf of the estate of the deceased.

My evaluation of the evidence on record, clearly shows that there is bad blood between the applicant and the respondent. The applicant initially had no problem with the mode of distribution proposed by her late son. In fact, the applicant ceded her priority to petition for the letters of administration in respect of her late husband's estate to her deceased son. The applicant had no problem with the proposal made by

her late son, and which was confirmed by the court, distributing to her one (1) acre out of the suit property. When the applicant was allowed to substitute her deceased son as the administrator of the estate of the deceased, she adopted the proposal made by her son allocating to her one (1) acre of the suit property. It was apparent from the evidence on record that the distribution of the estate of the deceased has been stalled or frustrated by the applicant's insistence that the respondent should inherit a lesser portion of land than that which was initially agreed by the family in 1995. It is evident that the applicant has no basis, either in law or in fact, to deny the respondent what is lawfully due to her as the widow of her late son, G N N.

The applicant has severally attempted to foist on the respondent persons who were not initially recognized as beneficiaries of the estate of the deceased. Her attempt to bring in a woman who purported to be a wife of her late son as a beneficiary of the estate of the deceased was thwarted by the court. The applicant has not been discouraged. She has gone ahead to include two other persons, namely P W M and B N N as beneficiaries of the estate of the deceased with the specific intention of reducing the portion of land that can be legitimately inherited by the respondent. Such attempt will not succeed. If the applicant wishes to extend her magnanimity to the said P W M and B N N, she can do so at her own expense and not at the expense of the respondent.

I therefore hold that the beneficiaries of the estate of the deceased are as earlier recognized by the court in the confirmation of grant issued to the late G N N on 10th July 1995 save that in the place of the said G N N – deceased, shall be substituted the respondent, R M K (*also known as R M N*). In the premises therefore, the suit property i.e.[particulars withheld] shall be distributed in accordance with the original certificate of confirmation of grant of 10th July 1995, that is, as follows: T W N – one (1) acre, F G N – five and a half (5½) acres, R M K – five and a half (5½) acres, and R W N – four (4) acres. The amount in Account No.[particulars withheld] at Kenya Commercial Bank, Nakuru shall be inherited by the applicant, T W N. The applicant is ordered to surrender the title deed in respect of the suit property to the Land Registrar, Nyandarua with a view to giving effect to the order made by this court on distribution of the estate of the deceased. The caution lodged by the respondent shall be removed upon the surrender of the said title deed in respect of the suit property being made to the said Land Registrar.

As this was a succession matter, there shall be no orders as to costs.

DATED at NAKURU this 22ND day of **MAY 2009**.

L. KIMARU

JUDGE