



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT NAKURU

Succession Cause 424 of 2004

IN THE MATTER OF THE ESTATE OF MONICA WANJIRU NGAMATE (DECEASED)

JUDGMENT

The late Monica Wanjiru Ngamate (hereinafter referred to as deceased) died on 13th July 2002. Margret Wangui, a daughter of the deceased petitioned for letters of administration in Nakuru Succession Cause No. 502 of 2004. The sons of the deceased Gideon Ngigi Ngamate and David Mbutia Watari also petitioned for letters of administration in Nakuru Succession Cause No.424 of 2004.

On 14th October 2005, the two succession causes were consolidated under the holding file is No. 424 of 2004. On 17th February 2006, the grant of letters of administration issued to Margret Wangui in Succ. Cause No. 502 was revoked. The court ordered another grant to be issued jointly to Margret Wangui, Gedeion Ngigi Ngamate and David Mbutia Watari. The parties were directed to file affidavits and each of them to indicate their preferred mode of distribution of the deceased parcel of land. It should be stated here that the dispute is over whom the beneficiaries of the deceased are, and more specifically, whether Gideon Ngigi Ngamate a step son, of the deceased is entitled to inherit a share of the deceased property being Mbahati/Kabati-ini/Block1/1913.

Margret Wangui Ngamate (hereinafter referred to as the objector) gave evidence that their father had two wives. The deceased was the first wife and Mini Njeri was the second wife, the first wife had the following children:-

- a) Eunice Nyaguthie (married)
- b) Rahab Nyambura (married)
- c) Gladys Njeri (married)
- d) Josephine Njoki (deceased)
- e) Josephat Watari (deceased)
- f) Rachael wangari (married)
- g) David Mbutia (married)
- h) Margaret Wangui Ngamate (objector herein)

The second wife had the following children:-

- a) Gideon Ngige Ngamate (married)
- b) Mary Nyaguthie (married)
- c) Salome Wamboi (married)

According to the objector, the second wife separated from her father many years ago, she went away and acquired her own property in Nyahururu and has never lived with the deceased. The objector denied that Gideon Ngige Ngamate ever lived with the deceased or was brought up by the deceased as his child.

The evidence of the objector was supported by her sister Gladys Njeri who also signed consent in favour of the objector to be the sole administrator of the deceased's estate. She further testified that since the objector had been living on the suit premises after the demise of their mother, the entire parcel of land known as Bahati/Kabatiini/Block1/1913 should be transferred to the objector absolutely.

Gideon Ngigi Ngamate testified that he is the son of the late Nahason Ngamate who was the original allottee of the suit land. He purchased shares from Ndeffo Company Limited which was a land buying company that originally distributed the land to the share holders but his father died before the title was issued. The title was issued in favour of his step mother Monica Wanjiru Ngamate in October 1984. The petitioner contended that he was brought up by the deceased when his father separated from his mother and she went to live elsewhere. The petitioner insisted that he too is entitled to the deceased parcel of land which originally belonged to his father. In his opinion, the land should be shared between the eleven children of the deceased belonging to the first and the second house.

His evidence was supported by Eunice Nyaguithie. She confirmed that she is the first born of the first house and the objector is her real sister while the petitioner is a step brother. She testified that the petitioner was educated by her late father and he used to live at Engachura with the deceased. It is the deceased who brought up the petitioner and educated him up to the University of Makerere. She disagreed with the objector that the petitioner had never stayed with them. She also testified that the suit land was purchased by their late father and even the petitioner contributed but the deceased took the title in her name. This witness was of the view that the suit land should be divided among the eleven children of the deceased.

The dispute herein is how the deceased 1 ½ acres of land known as Bahati/Kabatiini –Block 1/1913 should be distributed, and whether the petitioner who is a step son of the deceased is entitled to inherit. The property is registered in the name of the deceased and the title was issued on 2nd October 1984. The petitioner alleges that this land belonged to his late father that is the late Nahason Ngamate who died on 8th May 1981. He contended that his late father was the registered share holder of Ndeffo Limited who allotted the deceased the parcel of land.

The evidence of the registration of title is conclusive as to who is the registered proprietor of the land. Therefore the evidence that the property belong to Nahason Ngamate is not admissible in the face of a registered title. In any event the petitioner should have petitioned for the letters of administration after the death of Nahason Ngamate or at least contested the title of the deceased during her life time. The petitioner is the step child of the deceased. The deceased's estate falls for determination under the provisions of section 38 of the Law of Succession where it is provided as follows:-

“Where an intestate has left a surviving child or children but no spouse, the net intestate estate shall, subject to the provisions of sections 41 and 42, devolve upon the surviving child, if there be only one, or be equally divided among the surviving children.”

The petitioners claim could only have succeeded under part three of the Law of Succession that is provision for a dependant, if he can prove that he was entitled for provision as a dependant of the deceased. During the hearing the petitioner confirmed that he has his own parcels of land in Ndaragwa.

He also has a parcel of land at Maili NNE and also at Ndeffo farm. In this case the petitioner would not need to be provided for, having been brought up by the deceased until adulthood was good enough.

The deceased estate should be shared among her eight children in equal shares. If any of the beneficiaries would like to relinquish their share to the objector they are free to do so. The letters of administration should be issued to Margret Wangui Ngamate and David Mbutia Ngamate and the deceased parcel of land Bahati/Kabatiini/Block1/1913 be shared equally among the eight beneficiaries the children of the deceased. This being a family matter, each party shall bear its own costs.

JUDGMENT READ AND SIGNED THIS 25TH JUNE, 2009.

M.K. KOOME

JUDGE