



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)
Succession Cause 3032 & 2445 of 2001

IN THE MATTER OF THE ESTATE OF KIIRU WANJOHI – (DECEASED)

JUDGMENT

The above two causes were filed in respect of the estate of Kiiru Wanjohi, the deceased, who died on 10th December, 2000.

The first cause was filed by the Public Trustee on 8th October, 2001. A grant of Representation was issued to the Public Trustees on 23rd October.

On 28th November, 2001 summons for revocation of the said grant was filed by Samuel Anthony Mbogo and Elvis Wanjohi Kiiru, sons of the deceased from the 1st house as shown in the affidavit of the Public Trustee in support of the Petition for representation. I am not sure how another grant of representation was issued in the names of the Public Trustee again on 23rd January, 2004. In any event, summons for confirmation was filed by the Public Trustee on 29th November, 2005 mentioning 7 beneficiaries for the 1st home and 4 beneficiaries for the 2nd house, namely;

1st House:

1. Eliud Karanja Kiiru - son adult
2. Anthony Mbogo Kiiru - son adult
3. Mary Njeri Kiiru - daughter adult
4. Lucy Wangeci Kiiru - daughter adult
5. Elvis Wanjohi Kiiru - son adult
6. Sarah Mukuhi Kiiru - daughter adult
7. Christine Wangari Kiiru - daughter adult

2nd House:

1. Mary Wanjeri Kiiru - widow adult
2. Kennedy Maina Kiiru - son 14 years
3. Samuel Mbogo Kiiru - son 10 years
4. Esther Njeri Kiiru - daughter 8 years

The said grant was objected to beneficiaries from the 1st house.

While the aforesaid cause was also filed, Sammy Anthony Mbogo Kiiru and Elvis Wanjohi Kiiru filed another petition for letters of Administration on 8th December, 2001 being P & A. No.3032 of 2001.

They have indicated only eight beneficiaries in the said petition namely:

- (a) Sammy Anthony Mbogo Kiiru - Son aged 50 years
- (b) Elvis Wanjohi Kiiru - Son aged 45 years
- (c) Serah Mukuhi - Daughter 42 years
- (d) Lucy Wangechi - Daughter aged 39 years
- (e) Christine Wangari - Unmarried Daughter aged 35 years
- (f) Mary Njeri - Married Daughter aged 33 years
- (g) Eliud Karanja Kiiru - Son aged 54 years
- (h) Phillis Wanjiku Kiiru - widow (Deceased)

The grant of representation was issued in their joint names on 15th February, 2002. Summons for confirmation was filed on 22nd January, 2003. The said application annexed consent from Serah Mukuhi, Eliud Karanja, Christine Wangari, Lucy Wangechi and Mary Njeri Wakaba in presence of a Commissioner for oaths on 22nd January, 2003.

The said application was allowed and certificate of confirmation of grant was issued on 17th March, 2003. Thereupon summons for revocation was filed on 3rd August, 2006 by Mary Njeri Kiiru and Lucy Wangechi Kiiru on the grounds of fraud by making false statement and/or concealment of material facts. The Applicants filed affidavit sworn on 2nd August, 2006 claiming that they are the daughters of the deceased and that the confirmation was done without their knowledge or consent. I may only note here that, as stated above, one Mary Njeri Wakaba and Lucy Wangechi have been shown to have signed the consent for confirmation and even from the list of beneficiary in P & A 2445 of 2001, I do not see any other daughter from any house as Mary or Lucy.

Replying affidavit of one Lucy Wandia, Widow of a Co-Administrator Elvis Wanjohi Njiru sworn on 7th November, 2006 avers that Lucy has already transferred the shares of Kenya Breweries to her name and is using L.R. No.Loc.8/Kagunda/135 which belonged to late grandfather and family has agreed to bequeath that property to her.

Similarly she averred further that Mary has also transferred to herself the shares from Sukuma Wiki Co. Ltd and at the time of distribution she conceded to the proposed distribution and was contented. She is already married to one John Wakaba Gachohi.

She alleges that immediately after the death of her husband the 1st Administrator Sammy Anthony Mbogo has ganged up with others with an intention to remove her and family from Dandora property. It is also averred that the 1st Administrator had been selling the properties bequeathed to him and that he was now eyeing to usurp properties of other beneficiaries. According to her, the property Loc.8 was not mentioned in the list of assets of the estate as it belonged to the grandfather and not to the deceased. In any event, Lucy is occupying the said property.

It is stressed that the Application is not bonafide and has been made with after thoughts.

One Sarah Mukuhi another beneficiary from 1st house has also sworn and filed a replying affidavit in opposition to the summons for revocation and reiterated similar facts. She has annexed a document to show that Plot B-3504 is in the name of the 1st Administrator.

The 1st Administrator has sworn on 1st February, 2007 a replying affidavit in opposition reiterating that the beneficiaries are enjoying his/her share since distribution and that plot B-3504, Dandora which was bequeathed to him was rightfully sold by him.

One Sarah Mukuhi in her affidavit sworn on 12th March, 2009 had averred that Mary Wanjeri Kiiru who claims to be a widow of the 2nd house had colluded with the deceased in disposing off the properties acquired by the deceased from contribution from all the children of the 1st house whose mother died in 1991. She annexed the copies of pleadings of H.C.C.S. No.1445/98 (Nbi) filed by all the children of 1st house against the deceased. She also annexed the clan meeting held on 17th February, 2001 wherein the said widow did not attend and it was minuted that she did not attend the funeral or contribute anything towards funeral. She also annexed a schedule of distribution of the estate which was drawn by 1st Administrator which shows that he has sold two properties (shown to be bequeathed to him namely Dandora B-3504 and Block 102/93.

As per affidavit of Samuel (1st Administrator) NBI Block 102/38 is in dispute in H.C.C.S. No.12809 Nairobi. He also stated that as per the family agreement the estate was proposed to be shared as under:

(a) Dandora phase iv plot No.142 b – 32 rooms

- i. Elvis Wanjohi - 8 rooms
- ii. Mary Njeri - 8 rooms
- iii. Lucy Wangechi - 8 rooms
- iv. Christine Wangari - 8 rooms

(b) Dandora phase ii Plot 3502

Anthony Mbogo - 6 rooms

(c) Kayole Soweto Plot No.534 - 11 rooms

Anthony Mbogo - 3 rooms

Sarah Mukuhi - 8 rooms

(d) NBI/Block 102/93 - Eliud Karanja

(e) NBI/Block102/354 - Anthony Mbogo (sold)

(f) Bahati Kabatini Block 1/203 - Anthony Mbogo (sold)

(g) Embakasi ranching Plot 374 - Elvis Wanjohi

(h) Kenya Breweries shares - Lucy Wangechi

(i) Sukuma wiki - Mary Njeri

(j) Makadara shares - Christine Wangari

It is also averred in further affidavits of Sarah Mukuhi sworn on 27th May, 2009 that the Step mother of her late husband, in short tenure of four years of marriage had sold many properties and Sammy Anthony also have done so and thus the revocation application should not be allowed. It is urged that after the sale of a lot of properties and after everyone is settled in their respective shares and have also enjoyed and accepted the distributed properties, the applicant smacks revocation of unfair demand of further share by the people who have sold their share. The second family although are of four units only have enjoyed its share of the estate properties prior to the death and the same has to be looked into while distributing the estate.

The facts of these two causes are not very much complex or distributed.

The deceased has a wife who died in 1991 and they had seven children. After the death the deceased married to Mary Wanjeri Kiiru, who had three children.

During the life time of the deceased, the children of the 1st house had dispute with the deceased in respect of properties which they claimed were acquired from their contribution and co-operation from the late wife and all of her children. On his re-marriage the deceased did not acquire any new properties were acquired and no such evidence is before the court.

The specific averments of sale of properties mentioned in affidavit of Sarah Mukuhi sworn on 12th March, 2009 is not denied by the objectors Mary Njeri and Lucy Wangeci, or Mary Wanjeri the step-mother. They have also not stated whether the sale proceeds were ever distributed by the deceased to any of the beneficiaries of the 1st house.

Mary Njeri Kiiru and Lucy Wangechi the daughters from the first house are the objectors and they do not even aver that they have authority from the widow of the 2nd house. Moreover, it is evident that both the objectors have been enjoying their shares without any objection since the confirmation. Not only that, their averments, that their signature appended against their names on the consent attached to the application of confirmation are forged, have not been substantiated at all. Their mere averments against their silence on the allegations that they have accepted and have been enjoying their shares without any objection till filing of their application for revocation, cannot stand water or cannot prove the validity thereof.

In my considered view, both the objectors have failed to prove that they were unaware of the confirmation upto the date of their application for revocation dated 2nd August, 2006 and their claims as such cannot be accepted and I reject the same.

What is more surprising is that, the submissions and/or averments to the effect that the widow Mary Wanjeri Kiiru was evicted from her matrimonial home on Plot 142 B, has not been averred or supported by her in her affidavit in support sworn on 26th May, 2009. What she is seeking is only order to collect rent from some of the plots owned by the deceased so that she could pay school fees for her children.

It is evident from the facts of these two causes that there has been bad blood amongst the family members even during the life time of the deceased and further disturbance without proper cause shown shall escalate the feud. I cannot loose sight that one of the Administrators Elvis Wanjohi was found to be murdered.

What best I can do is simply to note that the widow and specially the minor children who are school going are not taken care of.

The remaining executor has given an account of some rents collected but has not given any account for the properties which has been sold by him. I thus direct that out of the shares of both the Administrators 10 per cent be given to the 2nd house to be held by Mary Wanjeri Kiiru in life interest and in trust for her

three children namely:

1. Kennedy Maina Kiiru
2. Samuel Mbogo Kiiru and
3. Esther Njeri Kiiru - in equal shares.

As I have not revoked the certificate of confirmation issued in P.& A. No.3032/01 except for the above referred review of the division, I direct that both the grants of representation dated 23rd October, 2001 and also of 23rd January, 2004, made in succession cause No.2445/01 be revoked. I further direct that the rectified certificate of confirmation as directed hereinbefore in Succession Cause No.3032/01 be issued. I shall not make any order on costs to avoid any further disturbance in the family.

Lastly, I order Samuel Anthony Mbogo and Lucy Wandia the widow of Elvis Wanjohi Kiiru to prepare and file appropriate statement of accounts in respect of the rents collected and proceeds received from sale of estate properties within 45 days from the date hereof.

Orders accordingly.

Dated, Signed and Delivered at Nairobi, this 22nd day September, 2009.

K.H. RAWAL

JUDGE

22.9.09