



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NYERI
Succession Cause 96 of 2005
IN THE MATTER OF THE ESTATE OF JOSEPH NGATIA KIGO (DECEASED)
And
EZABEL WANGUI KIGO.....PETITIONER
Versus
ISABEL WANGUI NGATIA & 3 OTHERS.....PROTESTERS

RULING

Joseph Ngatia Kigo hereinafter referred to as “*the deceased*” died on 19th March, 2002. He was survived by:-

- (a) Mary Njoki Ngatia – wife
- (b) Kigo Ngatia – son
- (c) Macharia Ngatia – son
- (d) Wachira Ngatia – son
- (e) Wangui Ngatia – Daughter (unmarried)
- (f) Gladys Wahito Ndiritu – Daughter (married)
- (g) Leah Nyandia Ng’ang’a – Daughter (married)
- (h) Elizabeth Wakuraiya Ndiritu – Daughter (married)
- (i) Mary Gachambi Theuri – Daughter (married)
- (j) Martha Njoki Muchemi – Daughter (married)
- (k) Ezabela Wangui Kigo – Mother

The estate of the deceased in the main consisted of the land parcel Thegenge/Karia/581 measuring 2.47

Ha hereinafter referred to as “*the suit premises*”.

In the fullness of time, Ezabela Wangui Kigo hereinafter referred to as “*the petitioner*” petitioned for the letters of administration with regard to the deceased’s estate. No objection having been raised to the petition, on 11th May, 2005 this court duly issued the grant of letters of administration intestate to the petitioner. On 9th October, 2006 the petitioner presented her application for confirmation of grant through Messrs Waweru Macharia and Karweru Advocates. She proposed that the suit premises be shared equally between herself and Mary Njoki Ngatia. In a nut shell she wanted the suit premises shared equally between herself and the family of her deceased son.

This proposal did not go down well with the deceased’s children. The children consisting of Isabel Wangui Ngatia, Hezron Kigo Ngatia, Charles Macharia Ngatia and Stephen Wachira Ngatia all filed affidavits of protest against confirmation of grant. They all contended that the petitioner was their grandmother who had petitioned the court for letters of administration of the estate of their father without informing them, requiring their consent and or issuing them with the citation to renounce their right to the same though she knew that they were the direct beneficiaries of the estate and first in order of consanguinity. That the petitioner had also failed to disclose that there was another succession cause pending in this court being Succession Cause Number 557 of 2004 filed earlier by their mother, Mary Njoki Ngatia with regard to the same estate which had not been concluded. As far as they were concerned the deceased’s estate ought to be shared equally between them as the petitioner was not a direct beneficiary of the estate of the deceased but a licensee.

The petitioner responded to those protests vide a further affidavit dated 20th May, 2009. In the main she deponed that the suit premises were registered in her deceased’s son name at her request and instance. she was responsible for that registration as the deceased was a merely aged 6 year old at the time of land consolidation and demarcation. Before the institution of these proceedings she caused citation to issue to the protesters and their mother. Initially she had even sought help from the land disputes tribunal on the matter which directed the family to institute the current proceedings. In the meantime, the protesters’ mother gave evidence under oath and also appended her signature to the consent to the application for confirmation of grant agreeing that she should get ½ of the suit premises. The protesters being sons and daughters of the deceased, the petitioner could not possibly see what priority in claim they had over their mother to want to take away what was legally hers.

On 2nd November, 2007 this cause come before me on a mention with a view to determining the fate of Succession Cause Number 557 of 2004. The protesters’ mother then stated that she had been the petitioner therein. She had not taken any steps to prosecute the same though. Accordingly she wished to withdraw the same and proceed with the instant cause. The petitioner and protesters not objecting, I made an order then withdrawing the said succession cause. Parties thereafter agreed to have the application for confirmation of grant and the protests to be heard simultaneously by way of oral evidence. A consent order to that effect was subsequently made.

When the cause next came up for hearing before Kasango J, on 10th March, 2009, the protesters’ mother is recorded as saying “.....I am agreeable to share the estate property with my mother in law the petitioner....” It was on that basis that the court then proceeded to vary the previous directions. The court now directed that the cause would henceforth be heard by way of affidavit evidence. Subsequent thereto, parties filed and exchanged written submissions on the affidavits filed. I have carefully read and considered them.

The protesters have advanced 3 grounds in support of their protests; first, that the petitioner never informed them nor cited them when she commenced these proceedings, secondly, that she failed to disclose to this court that there was another succession cause filed earlier with regard to the same estate and finally that the petitioner was not a direct beneficiary or dependant of the estate of the deceased but a licensee.

The first argument advanced by the protesters cannot possibly be correct. Before filing the petition,

the petitioner sought and obtained from Gladys Wahito Ndiritu, Leah Nyandia Ng'ang'a, Elizabeth Wakuraya Ndiritu, Mary Gachambi Theuri, Martha Njoki Muchemi and Margaret Wangari Kiama consent to the making of a grant of administration intestate to a person of equal or lesser priority under rule 26 (2) of the probate and administration rules. These are sisters of the protesters. It is hard thus to imagine that the said sisters would come by the information that their grandmother had petitioned for letters of administration intestate with regard to their father's estate and not share it with the protesters. Further there is evidence on record that on 16th February, 2005, the petitioner issued a citation to accept or refuse letters of administration intestate under rule 21 of the Probate and Administration Rules to Mary Ngatia, Kigo Ngatia, Macharia Ngatia, Wangi Ngatia and Wachira Ngatia, the protesters and their mother herein. On the 25th February, 2005 at about 2.30pm at Giakanja market in Nyeri town the said citation was served upon Mary Njoki Ngatia in the presence of the Chief of the area, David Mwihungi going by the remarks of the process server at the back of the copy of the said citation filed in court. The process server also filed an affidavit of service to that effect. It should be noted that the said citation was addressed to all the protesters and their mother. So that if the mother was served as indeed she was, it is safe to assume that the protesters too got wind of that fact. In any event it is hard to believe that the mother would receive the citation and fail to disclose the same to the protesters, her own children. Further and subsequent thereto the cause was even advertised in the Kenya Gazette of 22nd April, 2005. The idea behind Gazetting a cause in the Kenya Gazette is to enable those bent on objecting to the issuance of the grant to the petitioner to do so. There is also underlying presumption that every Kenyan routinely reads the Kenya Gazette although that is not ordinarily the case. The protesters cannot therefore be heard to claim that they were unaware of the cause. On the material on record I am satisfied that the protesters were aware of the petition and indeed were cited. In any event citation is not a mandatory requirement.

The other issue raised by the protesters is the fact that the petitioner failed to disclose that there was another succession cause pending in this court with regard to the same estate. To me this is a non-issue. That cause was not filed by the petitioner but the protesters' mother. There is no evidence that the protester's mother ever took any steps to notify the petitioner and or even prosecute the same. Indeed in her own words uttered on 2nd November, 2007, after she filed the succession cause, she took no steps at all to prosecute the same. Why then should the petitioner be blamed for the protesters mother's indiscretions. In any event the protesters' mother has since withdrawn her said succession cause and elected to participate in the instant cause.

Finally, the protesters claim that the petitioner was not a direct beneficiary of the estate of the deceased but a licensee. She was also not a dependant. The law does not say that only the wife and children of the deceased are the one's entitled to petition for letters of administration. If anything, by virtue of section 56 of the Law of Succession Act, anybody in the world may petition for the grant so long as he is not a minor, of unsound mind or bankrupt. That notwithstanding, it is mischievous on the part of the protester to claim that the petitioner was not a direct beneficiary of the estate of the deceased. The petitioner was the mother of the deceased. From the evidence on record, the deceased was registered as the proprietor of the suit premises way back on 29th October, 1958. According to the death certificate annexed to the petition, the deceased passed on aged 51 years on 11th March, 2002. So that when he was registered as the proprietor of the suit premises as aforesaid, he was hardly 6 years old as correctly pointed out by the petitioner. That being the case he was not of the age that would have permitted him to own land. The petitioner has stated that she caused him to be so registered in trust for her and her siblings since in those days Kikuyu Women could not have land registered in their names. This court takes Judicial Notice of that fact. Indeed even the protesters' mother attested to that fact in her testimony before the Land Disputes Tribunal. She stated that;

“...all what the claimant has said was true and I have no objection with whatever she has said but she should first stick with one point if she want two acres or either we share it equally. There is no one who have ever denied my mother in law what she wants....”

What had the petitioner stated that elicited that response from the protesters' mother? This is what said;

“.....I registered the land Thegenge/Karia/581 to my son Ngatia S/O Kigo. Since he died the land is being held by his wife and I registered him during the demarcation and he was only 6 years old. I want the land to be subdivided into two portions although initially I just wanted two acres.....”

On the basis of the foregoing, how can the protesters claim that the petitioner was a mere licensee on the suit premises. How can they also claim that he was not a direct beneficiary of the estate of the deceased. Finally, how can they as well claim that she was not a dependant of the deceased. Yet the petitioner has occupied the suit premises since time immemorial and infact from the day it was so registered in the name of the deceased. Besides, when the protesters’ mother appeared in this court on 10th March, 2009, she categorically stated “...I am agreeable to share the estate property with my mother in law the petitioner.....” Who are these protesters to go against the wish of their mother. I think that they are simply being selfish and greedy. I do not think that the protesters who are so young as not to know how their father got registered as the owner of the suit premises should stand in the way of the truth already acknowledged by their mother.

The upshot of the forgoing is that I find no merits in the protest filed. Accordingly, they are dismissed with costs to the petitioner. The grant shall be confirmed in terms proposed by the petitioner in her application dated 28th August, 2008.

Dated and delivered at Nyeri this 8th day of October, 2009.

M.S.A. MAKHANDIA

JUDGE