



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NYERI

SUCCESSION CAUSE 275 OF 2002

IN THE MATTER OF THE ESTATE OF SIMON NDIRANGURURUMODECEASED

AND

NYANGARA NDIRANGU PETITIONER

J U D G M E N T

The late **Simon Ndirangu Rurumo** passed on sometimes on 16th march 2001. On 21st June 2002 one **Nyang'ara Ndirangu** hereinafter referred to as "**the Petitioner**" petitioned this court for the grant of letters of Administration intestate as the son of the deceased. In the affidavit in support of the Petition for Letters of Administration intestate, the Petitioner deponed that the deceased died intestate and left the following surviving him:

Nyangara Ndirangu – son

Gladys Wanjiru Rurumo – Daughter

Peter Mwangi Njaria – Grandson

Frank Muraya Ndirangu – son

As for the Assets of the deceased, the Petitioner indicated land parcel **Githi/Kirerema/213**. In the fullness of time the Petitioner duly issued a citation to accept or refuse letters of Administration intestate to **Gladys Wanjiru** and **Frank Muraya Ndirangu** claiming that the two had not taken out letters of administration of the estate of the deceased, meaning perhaps that the two had refused to take out letters of administration to the estate.

On being served with the citation, the two then teamed up with one **Margaret Wahito Warurumo**, hereinafter referred to as "**the Objectors.**" They reacted by objecting to the making of the grant and contemporaneously filed a cross-Petition. The Objection was grounded on the premise that the Petitioner at the time of the filing of the petition had not given a comprehensive list of the persons surviving the deceased, neither did he seek for their consent to file the petition as required by the law. They then proceeded to give the comprehensive list of the survivors of the deceased as follows:-

(a) John Irungu Njaria – Grandson

- (b) **Peter Mwangi Njaria – Grandson**
- (c) **James Ndirangu Njaria – Grandson**
- (d) **Paul Rurumo Njaria – Grandson**
- (e) **Margaret Wahito Rurumo – Daughter in law**
- (f) **Gladys Wanjiru Rurumo – unmarried daughter**
- (g) **Nyang’ara Ndirangu – son**
- (h) **Frank Muraya Ndirangu – son**

The matter was then placed before **justice Khamoni** on 24th October 2005 for hearing when it transpired that although the objectors had filed objection proceedings, they had not served them on the Petitioner. In the meantime the Petitioner had gone ahead to obtain the grant on 14th April 2005. Accordingly the Honourable Judge ruled that “..... **Objection dated 10th July 2002 was overtaken by events. That being the position, the said objection is hereby struck out. Objectors at liberty to raise a protest when the Petitioner applies for confirmation of the grant dated 14th April 2005.....**” Sure enough, when the Petitioner applied for the confirmation of the grant on 15th November 2005, he was met with a joint protest by **Gladys Wanjiru Ndirangu** and **Frank Muraya Ndirangu**. This time around **Margaret Wahito** was not in the picture although it would appear that the two objectors were also acting on her behalf. However **Margaret Wahito** did not on her own file an affidavit of protest. I also note that the two objectors instead of filing affidavit of protest as required by the rules did instead file a replying affidavit. However nothing should turn on this as reading through the two “**replying affidavits**” one gets the gist of what they are upto; that is that they object to the distribution of the estate of the deceased as proposed by the Petitioner. It must also be appreciated that the objectors are lay people and may not appreciate the intricacies of the law as regards succession matters. In any event the issue was not raised and canvassed before me by any of the parties. I would in the premises ignore the omission and treat the replying affidavit as affidavit of protest.

In his application for the confirmation of the grant, the Petitioner had proposed that the only asset of the deceased being “**LR No. Githi/Kirerema/213** be shared as follows:

- (a) **Nyang’ara Ndirangu-0.47 of a Ha.**
- (b) **Frank Muraya Ndirangu - 0.47 of a Ha.**
- (c) **John Irungu Njaria)**
Peter Mwangi Njaria) to get 0.47 of a
James Ndirangu Njaria) hectare jointly
& Paul Rurumo Njaria)

However in their affidavit of protest, the protestors propose the following scheme of inheritance:

- (a) **Joseph Rurumo – Deceased (son) – 0.28 Ha.**
- (b) **Frank Muraya – Son – 0.28 Ha.**

(c) **Gladys Wanjiru (unmarried daughter)-0.28**

Ha.

(d) **Jackson Njaria – Deceased son – 0.28 Ha.**

(e) **Peter Nyang'ara – son – 0.28 Ha.**

The matter again came before Justice Khamoni on 10th July 2006 and after hearing the same at some length came to the following conclusion:

“..... As it appears this is a case which may require witnesses to state their evidence in the witness box to be cross-examined the issues being:

(a) whether Gladys Wanjiru is a daughter of the deceased and sister of Nyang'ara Ndirangu and

(b) whether Margaret Wahito was Joseph Rurumo's wife and therefore Simon Ndirangu and Irungu Rurumo sons of Joseph Rurumo.

This matter stood over for it to be given another date at the registry...”

It was in this state of affairs that the matter eventually found its way before me on 15th November 2007.

In his evidence in support of the protest, **Frank Muraya** on behalf of the other objectors testified that the Petitioner was his brother and the deceased was his father. He died on 16/3/01 and left behind the subject piece of land. He objected to the proposed distribution by the Petitioner in his application for the confirmation of grant on the grounds that before the deceased passed on he had already subdivided the suit premises into five equal portions and shared them out to **Joseph Rurumo Ndirangu, Frank Muraya Ndirangu, Gladys Wanjiru, Njaria Ndirangu** deceased and **Peter Nyang'ara Ndirangu**. That on the ground each one of them had occupied the portion given to him/her as aforesaid. He went on to testify that his co-objector was a daughter of the deceased. She had been previously married but was now divorced. Upon divorce she returned home. In his opinion he wanted the suit premises be shared in accordance with their father's wishes.

Under cross-examination by the Petitioner, he stated that the chief had attended to the dispute and directed in a letter that all of them should benefit from the estate. He maintained that the deceased had already subdivided the land among his siblings. That the co-objector was their eldest blood sister and she stays in a portion given to her by the deceased during his lifetime. He pointed out that the money which accrued from the dowry paid for **Gladys Wanjiru** was given to the Petitioner by the deceased for his own dowry. He confirmed that their deceased father had shown each one of them where to cultivate. He confirmed that **Jackson Njaria**, a brother died living behind 4 sons and that when a person dies, his estate goes to his family.

On her part, the second objector testified that she knew the Petitioner as her brother. That she was the Eldest in the family and brought up the Petitioner from childhood. That the Petitioner burnt his brother, **Joseph Rurumo's** house and he was forced to relocate to Lamu. That when the Petitioner asked her to share the portion of land belonging to **Joseph Rurumo** and she refused, he told her that he would disinherit her. She maintained that the Petitioner was her blood brother. She had been married but was divorced since she could not have children. She came back when the deceased was alive. The deceased subdivided his land and gave each of the five portions to his children including the 2nd objector. Indeed the 2nd objector has put up a house in her portion. The objector concluded her testimony by stating that under Kikuyu customs, she is entitled to inherit a portion of her father's Estate as an unmarried daughter. She supported the proposed distribution by the co-objector which was the same as one proposed by her in her own affidavit.

Cross-examined by the Petitioner, the 2nd Objector maintained that his proposed division of the estate of the deceased was calculated to disinherit her.

Finally the objectors called as a witness, one, **John Irungu**, their nephew. He was the son of **Joseph Rurumo**. The deceased was his grandfather. He stated that he was opposed to the distribution proposed by the Petitioner as he was hell bent on disinheriting **Joseph Rurumo's** family. That he was testifying on behalf of his mother who resides in Lamu and she is not married.

Under cross-examination by the Petitioner, the witnesses maintained that his mother was no longer married. She had previously been married but had since divorced.

This then brought to an end the Objectors' case. On behalf of the Petitioner, only the Petitioner testified. It was along these lines; that he petitioned for the grant of letters of administration for the estate of **Ndirangu Rurumo**, his father. He denied that **Wahito** was a wife to his brother **Joseph Rurumo**. That though they had four children no dowry was paid. That there was a case between the deceased and the Wahito's father wherein it was decided that Wahito should not inherit anything as she had been married to one Mutuku. As for the 2nd Objector, the Petitioner maintained that she was unknown to him as his surname was **Ndirangu** whereas hers was **Rurumo**. That there was no relationship between the two names. She was not his sister and she was merely out to snatch their property. He also denied that prior to his death, the deceased had distributed the estate to the five members of his family. He also denied that the 2nd objector was staying in her portion of land. He stated that in fact the 2nd Objector was staying with the 1st Objector. He concluded by stating that he had no problem sharing the parcel of land equally with the 1st Objector. However **Gladys Wanjiru** and **Margaret Wahito** were strangers and should not inherit anything.

Under cross-examination by the 1st Objector, he stated that if the court was to visit the locus in quo it will find that the land is subdivided into 5 portions but this is because the 1st objector masterminded the same. That the subdivision was by clan members. He also conceded that though there was a letter from the District Commissioner which transferred a share of the estate of the deceased to the 2nd objector the letter was nonetheless fraudulent. He never however took up the matter with the police. He maintained that **Joseph Rurumo** had a girlfriend in Wahito. She was never a wife as no dowry was paid. Nonetheless they had 4 children. That under Kikuyu custom, once Wahito left with the children and got married to Mutuku, her children ceased to belong to the family of the deceased. When asked questions by 2nd objector, he stated that he did not burn Wahito's house and that he was never jailed for 6 months as a result. He denied that the suit premises had been subdivided into five portions and that she had put up a house in her portion.

The issues for determination in this cause were settled by **justice Khamoni** as already stated. However before I start considering the issues, I should point out that only the 1st and 2nd objectors filed an affidavit of protest. Though in the intilulement and body of the respective affidavit of protest the name of **Margaret Wahito** appears as an objector and or Protestor, she did not however on her own file an affidavit of protest.

So is **Gladys Wanjiru** a daughter of the deceased? There is overwhelming evidence on record that indeed she is. There is a letter from the office of the chief, Githi location dated 7th March, 2002 addressed to this court in which he states that prior to his death the deceased had "**a piece of land Githi/Kirerema/213. He is survived by:**

(a) **Joseph Rurumo deceased survived by Ndirangu Rurumo, Irungu Rurumo,**

(b) **Gladys Wanjiru Rurumo – unmarried**

(c) Nyang'ara Ndirangu ID/No. 0964696,

(d) Jackson Njaria Ndirangu – deceased

survived by (1) J. Irungu Njaria, (2) P. Mwangi Njaria, (3) J. Ndirangu Njaria, (4) Paul Rurumo

(e) Frank Muraya Ndirangu”

This is the normal letter written to the court by local chiefs in succession matters. In yet another letter dated 9th July, 2002 the same chief wrote to this court indicating that in his previous letter he had inadvertently omitted the name of one survivor. That survivor was **Margaret Wahito Rurumo**. In the same letter the chief maintained that the 2nd Objector was daughter of the deceased though unmarried. The chief cannot be lying if he indicates that **Gladys Wanjiru Rurumo** was a daughter of the deceased though unmarried. There can be no basis for the chief to lie. The chief is expected to know his subjects and that is why he is normally called upon by this court to verify the truth or otherwise of the survivors of an estate of a deceased person in his locality so as to assist this court in arriving at a just decision. Further in his own affidavit in support of the petition for letters of administration intestate, the petitioner himself has deposed in paragraph 4 thus “..... **The deceased died intestate and left behind the following surviving him/her.**

(a) Nyang'ara Ndirangu – son

(b) Gladys Wanjiru Rurumo – Daughter

(c) Peter Mwangi Njaria – Grandson

(d) Frank Muraya Ndirangu – son”

Having so deposed how he can now turn around in his oral evidence and claim that **Gladys Wanjiru** was unknown to him. Clearly this is a case where the Petitioner is not being honest and or candid. Indeed his testimony borders on perjury. I choose to believe the chief's word as well as the Petitioner's word on oath i.e. the affidavit in support of the petition. In a bid to show that **Gladys Wanjiru** was not related to him, the petitioner claimed that whereas his name was **Ndirangu**, hers was **Rurumo** and therefore the two names had no relationship. This position cannot be tenable. It does appear that both Ndirangu and Rurumo are family names of the petitioner and objector. After all their deceased father was called **Simon Ndirangu Rurumo**. Further the Kikuyu people have a unique system of naming their children depending on their sex. So that it will not be surprising in a family to find that though one member would have a name like Ndirangu, you will equally find another member of the family going by the name of Rurumo.

It is also not lost on me that of all the witnesses who testified in this case, other than the Petitioner, they all knew the 2nd objector. Is it a mere coincidence? I do not think so. My conclusion that the petitioner was not a witness of truth is reinforced by the fact that the 2nd objector stays on a portion of the suit premises. How could she have found herself in that portion of land if she was not in a way related to him and or the deceased. I doubt very much that the Petitioner would have allowed the 2nd objector to reside on the portion of the land if she was a stranger as he wanted this court to believe. I am certain that he would have caused her eviction.

The petitioner told the court that the 2nd objector does not stay on a portion of land and that she has not put up a house. That in fact the 2nd objector resides with the 1st objector. This cannot again be true as the petitioner himself conceded under cross-examination that the parcel of land was subdivided into five portions through the machinations of the 1st objector. If indeed it was so subdivided by the clan, it is apparent therefore that one portion was meant for the 2nd objector. Further there is evidence that a letter was written by the District Commissioner authorising the transfer of a share of the deceased estate to the 2nd objector. The petitioner claims that he letter was a forgery. However he never took up the matter

with the police.

In the end I have come to the inevitable conclusion having considered the evidence tendered and the circumstances of the case that the 2nd objector was indeed a daughter of the deceased who is unmarried and a sister to the petitioner. In accordance with Kikuyu customs and rites she is entitled to a share of the estate of her deceased father as an unmarried daughter.

The other issue for consideration is whether **Margaret Wahito** was Joseph Rurumo's wife. **Joseph Rurumo** is a brother to the petitioner and the two objectors. He passed on. According to the objectors and PW3, **Margaret Wahito** was married to **Joseph Rurumo** and had 4 children. However according to the petitioner **Margaret Wahito** was a mere girlfriend although from the relationship they had four children. That as long as no dowry was paid to **Margaret Wahito's** father, **Margaret Wahito** cannot claim to have been married to his brother. Finally, Petitioner takes the view that **Margaret Wahito** having been married to one **Mutuku**, she is not entitled to inherit a portion of the deceased's estate.

There are two letters again on record all dated 9th July 2000 by the Chief of Githi location and addressed "to whom it may concern" and to this court respectively. The letters were written to assist the Petitioner in his petition for the grant of letters of administration intestate. In the first letter, the chief categorically states "..... **This is to confirm to you that the above referred person is the only wife of the late Joseph Rurumo Ndirangu. She is also referred to her (sic) as Margaret Wahito Rurumo. She is married under Kikuyu customary marriage**" In the second letter a portion which has been reproduced elsewhere in this judgment, the chief again refers to **Margaret Wahito Rurumo** as having survived the deceased. These letters were filed in court by the Petitioner. He now turns around to disown her claiming that she was never married to his late brother because no dowry was paid. The Petitioner apart from making that wild allegation did not furnish this court with any evidence to the effect that no dowry was ever paid to the parents of **Margaret Wahito**. How could **Joseph Rurumo** have sired 4 children with **Margaret Wahito** on a girlfriend/boyfriend basis? Though possible, I highly doubt in the circumstances of this case that it was not on the basis of husband and wife. It would appear to me that there must have been some bad blood between the petitioner and **Margaret Wahito** following the death of **Joseph Rurumo** that compelled the later to relocate to Lamu. How else does one explain the allegation that the petitioner burned **Margaret Wahito's** house and was actually arrested, charged, convicted and jailed for 6 months. Although the petitioner denied vehemently that evidence, it does appear to me that there is some element of truth in it. The objectors could not have just conjured up that evidence. There is also evidence that prior to passing on the deceased had subdivided the parcel of land into five portions and given his five survivors their respective portions. One of the portions went to the late **Joseph Rurumo**, the son of the deceased and husband of **Margaret Wahito**. Obviously the old man recognised that his late son had off-springs who had to be catered for in his estate. I believe despite the petitioner's denials that indeed the deceased had in his lifetime apportioned the suit premises into five portions and distributed it equally among his five members of family to wit:-

- (a) **Joseph Rurumo – deceased son and husband of Margaret Wahito**
- (b) **Frank Muraya – son**
- (c) **Gladys Wanjiru – unmarried daughter**
- (d) **Jackson Njaria – deceased son**
- (e) **Peter Nyang'ara – son**

Margaret Wahito may have been subsequently married by one **Mutuku**. But that does not mean that the children she begot with **Joseph Rurumo** should be disinherited. If that was to be accepted then essentially, **Joseph Rurumo** would have been disinherited in death. The issue here is not about **Margaret Wahito** in her own right inheriting a portion of the estate of the deceased, rather she is doing

so in trust for the children of **Joseph Rurumo**. That being my view of the matter, I hold that **Margaret Wahito** was **Joseph Rurumo's** wife and therefore her off-springs from that relationship, **Simon Ndirangu** and **Irungu Rurumo** should be considered in the distribution of the estate of the deceased.

In the end I uphold the protests filed by the objectors with the result that the estate of the deceased being LR No. **Githi/Kirerema/213** shall be distributed equally between the five siblings of the deceased to wit:

Joseph Rurumo

Frank Muraya

Gladys Wanjiru

Jackson Njaria

Peter Nyang'ara

However since **Joseph Rurumo** and **Jackson Njaria** are all deceased their respective shares shall go to their off-springs. For the avoidance of doubt **Joseph Rurumo's** share shall go to his two sons namely **Simon Ndirangu** and **Irungu Rurumo** equally. As for **Jackson Njaria**, his share shall equally be distributed among his sons; **John Irungu Njaria, Peter Mwangi Njaria, James Ndirangu Njaria** and **Paul Rurumo Njaria**. The grant of letters of administration issued herein on 14th April 2005 may now be confirmed on that basis.

As this dispute involved family members I will make no order as to costs.

Dated and delivered at Nyeri this 26th day of March 2008

M. S. A. MAKHANDIA

JUDGE