



**IN THE MATTER OF THE ESTATE OF NJUGUNA GITAHU NYAMAUNDU**

**JOSEPH MWANIKI NJUGUNA ..... PETITIONER**

**JOSEPH NGURU NJUGUNA ..... OBJECTOR**

**JUDGMENT**

The late **Njuguna Gitahi Nyamaundu** (deceased) passed away on **28<sup>th</sup> July, 1997** at advanced age of 97 years. On or about 19<sup>th</sup> January, 2000, the deceased son by the 1<sup>st</sup> widow, by the name **Joseph Mwaniki Njuguna** [petitioner) applied for letters of administration of the deceased estate. According to the affidavit in support of the petition, the deceased was survived by the following persons:

- (a) **Margaret Wanjiru Njuguna - Widow**
- (b) **Joseph Mwaniki Njuguna – Son**
- (c) **Isaac Mwangi Njuguna – Son**
- (d) **Joseph nguru Njuguna –Son**
- (e) **John nganga Njuguna – Son**
- (f) **Richard Kiragu Njuguna – Son**
- (g) **Albert Muthaka Njuguna – Son**
- (h) **Johnson Njehia Njuguna – Son**
- (i) **Chege Njuguna – Son**
- (j) **Kariuki Njuguna – Son**
- (k) **Teresia Nyambura Njuguna – Daughter**

The only asset of the deceased that was listed was title **No.Nyandarua/Mukungi/236** valued at Kshs.1.56000/= and a liability of a similar amount of money was also included.

A grant of letters of administration was issued to the petitioner on **26<sup>th</sup> July, 2000**. On 5<sup>th</sup> June, 2001, the petitioner applied for the confirmation of the grant and by an order dated **26<sup>th</sup> July, 2001**, the grant was confirmed and the deceased's estate was to be distributed according to a schedule as follows:

**Margaret Wanjiru Njuguna – Nyandarua/Mkungi/239 plot 1269- 5.22 Ac**

**Joseph nguru Njuguna – Nyandarua/Mkungi/239 Plot 1272 – 1.42 Acres**

**Teresiah Nyambura Njuguna- Nyandarua/Mkungi/239 Plot 1273 –1.42 Acres**

**Kariuki Njuguna – Nyandarua/Mkungi/239 Plot 1274 – 1.42 Acres**

**Johnson Njehia Njuguna – Nyandarua/Mkungi/239 Plot 1275 – 1.42 Acres**

**Richard Kiragu Njuguna – Nyandarua/Mkungi/239 Plot 1276 – 1.42 Acres**

**Chege Njuguna – Nyandarua/Mkungi/239 Plot 1277 – 1.42 Acres**

**Albert Muthaka Njuguna – Nyandarua/Mkungi/ 239 Plot 1278 – 1.42 Acres**

**Isaac mwangi Njuguna – Nyandarua/Mkungi/239 Plot 1279 – 1.42 Acres**

**Joseph Mwaniki Njuguna – Nyandarua/Mkungi/239 Plot 1280 – 1.82 Acres**

**John nganga Njuguna – Nyandarua/Mkungi/239 Plot 1281 – 1.82 Acres**

**Njuguna Gitahi – Nyandarua/Mkungi/239 Plot1270 – 0.41 Acres**

**Gregory Gichuki – Nyandarua/Mkungi/239 Plot 1271 – 0.41 Acres**

The application for confirmation of the grant was supported by a **consent** which was duly signed by all the beneficiaries including the objector. On 28<sup>th</sup> January, 2002, the objector herein sought for the revocation of the grant that was issued to the petitioner. The application is premised on the grounds that the grant was obtained fraudulently by making false statements and through concealment from court of relevant material facts.

The application was opposed by the petitioner and directions were given that the matter be heard and determined by way of oral evidence. The objector gave evidence in support of the application for revocation. He denied that the deceased had distributed the parcel of land prior to his death. According to the objector, the deceased property should be distributed according to the **two** houses and in accordance with the **kikuyu customary law**. The deceased was survived by two houses and the distribution should be in accordance to the houses. The objector's mother died in 1982 but she is survived by the objector and two daughters, while in the 2<sup>nd</sup> house the deceased is survived by the widow and eight sons. Upon the death of the deceased, the objector testified that he summoned a meeting of clan members which was attended by **Wokabi Mwagachamba (PW2)** this witness testified that he attended a meeting before the Chief's office and the elders agreed that the deceased property be distributed by allocating **20 acres** to the 1<sup>st</sup> house, **30 acres** to the 2<sup>nd</sup> house and **2 acres** to go to the deceased's brother.

The same meeting was also attended by **Michael Njuguna Macharia (PW3)**. This witness confirmed that he bought a parcel of land from the deceased who was his brother. He also said that prior to the death of the deceased in 1990, the deceased had called a meeting in which he distributed his parcel of land to his children by giving each child about **3 acres**. They proceeded to the Land Control Board for the consent to transfer but the objector had lodged a caution and therefore the transfer could not go through.

During cross examination this witness confirmed that a surveyor had been called by the deceased in **1990** and all the beneficiaries were shown their respective parcels of land. **Simon Mwangi Mutugi [PW4]** also testified on the side of the objector. He confirmed that he was present at a meeting called by the objector at which the elders decided that the **1<sup>st</sup> house** should get **20 acres** and the **2<sup>nd</sup> house 30 acres**. However, the meeting was not attended by the petitioner's house.

On the part of the petitioner, his evidence was collaborated by that of **Kariuki Njuguna Gitahi**

[DW2]. They testified that the deceased was married to two wives and the 1<sup>st</sup> house is survived by the objector and two daughters one who is married. The other daughter namely **Teresiah Nyambura Njuguna** was duly allocated **Plot No. 1273**. The 2<sup>nd</sup> house is survived by a widow and 8 sons and two daughters. The 2<sup>nd</sup> widow was given a larger portion of land than the children. During the deceased's life time he subdivided his land and allocated each beneficiary their share. The deceased carried out the sub-division and the mutation of the land into several sub divisions. The deceased obtained the consent from the **Land Control Board on the 28<sup>th</sup> August, 1996**. The deceased had mandated the petitioner to complete the transfers to the various beneficiaries but he died before the transfers were effected. Upon the death of the deceased, the petitioner testified that he sought the consents of the beneficiaries and he applied for the letters of administration which was duly confirmed according to the sub division and mutation plan which was prepared by the deceased. Following the confirmation of the grant, the petitioner effected the transfers of the various titles to the respective beneficiaries. He produced copies of titles for the beneficiaries who have collected their titles except for the objector who has not collected his title from the lands office.

According to the petitioner, the deceased property was distributed during his life time. The various beneficiaries have already taken possession of their various portions of land and some have sold. The objector is the only beneficiary who is dissatisfied with the distribution although he is also in possession of his respective portion of land.

Counsel for the petitioner urged this court to dismiss the application for the revocation of the grant. On the part of the objector, he urged this court to distribute the deceased's estate in accordance to the kikuyu customary law in accordance to the two houses and in accordance to the decision by the elders.

The above is the summary of the evidence from which the following issues arise. Firstly, whether the deceased sub divided and allocated to his respective survivors their share of the land; whether the grant of letters of administration was obtained fraudulently and through concealment of material facts, and whether the deceased's estate should be distributed according to the kikuyu custom between the two houses.

It is apparent from material on record that the objector consented to the petitioner being granted with the letters of administration. He signed the **consent** which is on record. The objector did not disown this consent and did not adduce any evidence to that effect. There are no grounds to support the allegation that the grant was obtained through fraud.

According to the petitioner, whose evidence was also supported by **PW3**, the deceased distributed his parcel of land in **1990**, he subsequently obtained the Land Control Board consent and the petitioner merely registered the transfers. Even if that was not the case, according to the Law of Succession **Cap 160**, any person dying after the **1<sup>st</sup> of July, 1981** their estates are administered according to the provisions of

the Act. **Section 2(1) of Cap 160** provides:

***“Except as otherwise expressing provided in this Act or any other written law, the provisions of this Act shall constitute the law of Kenya in respect of, and shall have universal application to, all cases of intestate or testamentary succession to the estate of deceased persons dying after the commencement of this Act and to the administration of estate of these persons.”***

The estate of the deceased who died in 1997 is to be administered in accordance with the provisions under Part (v) of the law of Succession Act and since the deceased was polygamous, his estate would be distributed according to section 40 of the Law of Succession which provides:

**“Where an intestate has married more than once under any system of law permitting polygamy, his**

personal and household effects and the residue of the next intestate estate shall in the first instance, be divided among the houses according to the number of children in each house, but also adding any wife surviving him as an additional unit to the number of children.”

I therefore disagree with the submission by the objector that the deceased estate should be distributed in accordance with the kikuyu customary law that favours distribution according to houses as opposed to distribution according to the number of survivors.

From the evidence on record, in particular the consent which was issued by the Kinangop Land Control Board on the 28<sup>th</sup> August, 1996 following an application which was made by the deceased for the sub division of his land on 13<sup>th</sup> November, 1991, it is evident that the deceased in his life time distributed his parcel of land among his children. A portion was given to his brother (PW3) . It is also significant to note that all the other beneficiaries including the objector’s sisters are in support of this distribution and they did not file any objection or even give evidence on the part of the objector. The objector himself must have been in support of the distribution of the estate when he signed the consent. He must have changed his mind perhaps when the titles were issued. In my view this is too late. The objector’s objection is tantamount to somebody closing stables after the horses are bolted.

Taking in totality the evidence before this court, I find no justification in revoking this grant and interfering with the distribution which was done by the deceased and which was completed by the petitioner.

Accordingly the application for revocation of the grant is dismissed. This being a family matter, each party should bear their own costs.

It is so ordered.

Judgment delivered and signed on 25<sup>th</sup> May, 2007.

**M. KOOME**

**JUDGE**