



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT MERU**

**Succession Cause 191 of 2006**

**IN THE MATTER OF THE ESTATE OF GEOFFREY KIRICHO MBOGORI-DECEASED**

**JANE KAGIGE GEOFREY.....PETITIONERS**

**VERSUS**

**WALACE IRERI NJERU.....INTERESTED PARTY**

**RULING**

On 14<sup>th</sup> April, 1997 the court granted letters of administration intestate to the applicants herein.

On 13<sup>th</sup> October, 1999 Wallace Ileri Njeru, described as interested party applied for the confirmation of the grant on the ground that he had purchased part of the estate namely, 4 acres of L.R. No.Mwimbi/Chogoria/70. Six days later on 19<sup>th</sup> October, 1999 the applicants also filed an application for confirmation, in which they proposed the mode of distribution.

From the date the first application was filed on 13<sup>th</sup> October, 1999, the same has been adjourned several times. Instead the applicants, in addition to the second application of 19<sup>th</sup> October, 1999, filed yet another application for confirmation on 3<sup>rd</sup> July, 2003. The latter application was, however, withdrawn by consent.

Once again, on 9<sup>th</sup> March, 2004 the applicants brought the instant application praying that the grant be confirmed and making proposals as to the distribution of the estate. This application has been adjourned several times until 28<sup>th</sup> February, 2005 when Julius Kiricho filed affidavit of protest against confirmation.

The protest raises three issues, namely, that the proposed distribution left out three dependants, Njagi Kiricho, Dominic Kiricho, and Kenneth Kiambi Mukobwa.

Secondly that the proposed distribution includes strangers, not dependants of the deceased, namely, Mutembei Kiricho, Nyaga Kiricho, and Mugambi Kiricho. The third issue is that one Wallace Ileri who bought 4 acres of Parcel No.Mwimbi/Chogoria/170 is reflected as being entitled to 4 ½ acres of that parcel.

In response to these averments the applicants have filed a supplementary affidavit in which they

explained that subsequent to Wallace Ileri's purchase of 4 acres, he availed funds to the applicants to enable them to file this cause and in return they offered him a further ½ acre. They also demonstrated that Mutembei, Nyaga and Mugambi were dependants of the deceased.

Finally they disowned Dominic Kiricho, Njagi Kiricho and Kenneth Kiambi Mukobwa – as dependants of the deceased. I have considered the respective positions of the applicants and the protestor. As I have stated there are three grounds raised in protest to confirmation of the grant.

I have also said that the applicants have disowned the three alleged dependants. Finally there is the issue of the ½ acre to Wallace Ileri. During the hearing of the application my attention was drawn to an affidavit in support of the petition sworn by the applicants dated and filed on 15<sup>th</sup> July, 1996 in which Njagi Kiricho and Dominic Kiricho are shown as sons of the deceased. Similarly in the application for confirmation filed by the applicants on 19<sup>th</sup> October, 1999, which is still pending, the applicants have deposed that Njagi Kiricho and Dominic Kiricho are adult sons of the deceased.

It is also interesting to note that in the application which was withdrawn by consent of the parties, the applicants in their respective affidavits had proposed that Njagi Kiricho be awarded 2 acres of Mwimbi/Murugi/229. Finally on this point, the Chief of Chogoria in his letter dated 26.10.95 filed on 11.7.96 list the two as sons of the deceased. What is strange is that in the present application the names of Njagi Kiricho and Dominic Kiricho are conspicuously missing without any explanation by the applicants. They have argued subsequently that Dominic Kiricho is a figment of the protestor's imagination. That Dominic is believed to have been sired by the deceased when on a trip to Zaire (Democratic Republic of Congo) and that no one has ever seen him.

Njagi Kiricho on the other hand is said to be a retired police officer aged over 55 years, whose parents are alive and who has no claim to the estate.

These averments do not offer an answer to either averments in which the two were shown to be sons of the deceased with Njagi Kiricho being allocated land.

Turning to the issue of 4 ½ acres it was submitted by counsel for the protestor that the agreement in respect of the ½ acre is not dated. That omission was conceded. The agreement in question is described as an Addendum to the Agreement dated 4<sup>th</sup> December, 1992. Only the year is shown as 2003 Section 3 (3) of the Law of Contract Act vide Legal Notice No.189 of 2002 provides as follows;

*“(3)” No suit shall be brought upon a contract for the disposition of an interest in land unless*

*(a) the contract upon which the suit is founded;-*

*(I) is in writing*

*(ii) is signed by all the parties thereto, and*

*(b) the signature of each party signing has been attested by a witness who is present when the contract was signed by each party”*

There is no requirement as to date. The agreement in question satisfies the above requirement. The date is shown as 2003 and the agreement is an addendum to the original agreement. That objection must fail. The interested party and the applicants have sufficiently explained why the ½ acre has been added to the original 4 acres purchases by the interested party. Finally there is the issue of Mutembei, Nyaga and Mugambi who the protestor claims to have no claim on the estate. The applicants have explained that the three have always lived with and depended on the deceased. Again, starting with the said Chief's letter of 26<sup>th</sup> October, 1995, the three are listed as dependants, all being described as sons of the deceased.

They are again listed and described as son in the affidavit in support of the petition and all the subsequent

affidavits. The protestor has not persuaded me that the three have no claim in the estate of the deceased.

In conclusion I find that the protestor has failed to prove that Kenneth Kiambi Mukobwa was a dependant of the deceased. I also find that Njagi Kiricho and Dominic Kiricho are entitled to a share of the deceased person's estate and further that the interested party is similarly entitled to the 4 ½ acres of the Mwimbi/Chogoria/70.

The application for confirmation of grant dated 9<sup>th</sup> March, 2004 is dismissed. Each party to bear own costs of the application.

DATED AND DELIVERED AT MERU THIS 11<sup>th</sup> DAY OF May, 2007

W. OUKO

JUDGE