



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI

Succession Cause 1047 of 1987

IN THE MATTER OF THE ESTATE OF STEPHEN NYONGO MUTINDA (DECEASED)

JUDGMENT

This is a long outstanding dispute involving the distribution of the estate of the late STEPHEN NYONGA MUTINDA (deceased) who died intestate on 9th July 1986.

The Letters of Administration was issued to the deceased three widows namely Rebecca Nyakaru Nyongo, Monica Mukugi and Hannah Wanjiru Nyongo being the 1st 2nd and 3rd widows respectively. The grant was issued on 29th February 1988.

This grant was confirmed on 14th July 1989 but this confirmed grant was subsequently revoked and set aside by an order by Mbitio J. made on 15th day of January 1991.

The matter was heard by way of viva voce evidence before the said judge but he retired from High Court Branch before the judgment was written. This matter was subsequently placed before several judges as the record will show no less than a dozen judges have handled the matter. Several directions were given that the parties do file written submissions on the proposed mode of distribution to enable the court write a judgment on the application for confirmation.

The dispute before me torches on the distribution of the estate of the deceased among the beneficiaries. Each Administrator has filed a list of distribution. There is no dispute regarding the survivors of the deceased.

In the course of the proceedings the 1st Administratrix Rebecca Nyakeru Nyongo passed away on 15th day of July 2005 and her son Samuel Kagicha Nyonga was substituted in her place as the 1st Administrator. This matter is quite complex, for a number of reasons:

Firstly the matter was heard and the evidence was recorded by different judge. Secondly the deceased died almost 20 years ago and the beneficiaries have not agreed on the mode of distribution whereas most of the properties have been in possession of some beneficiaries the ascertainment of their actual value is difficult.

In the interest of justice and considering the length of time this matter has taken I have taken it upon myself to go through the entire pile of papers, the proceedings recorded herein, the submissions by all the Administrators and the proposed modes of distribution proposed by each administrator very carefully. I have identified the following issues for determination

Firstly, how should assets of the deceased be distributed among the beneficiaries is it among the

individual beneficiaries or among the houses for each household to hold in trust.

Secondly, there is a variance as to how Section 40 of the Law of Succession has been interpreted and then this court is called upon to interpret the provisions of Section 40 of the Law of Succession.

Thirdly (although there seems to be no dispute) this court should determine the list of beneficiaries and the assets of the deceased.

Lastly how to apportion or allocate the assets to the beneficiaries while taking into account the various values of the assets and where the parties have settled and developed their homes over the period of time.

In my humble view the provisions of Section 40 of the Law of Succession as regards the distribution of the estate of an intestate who was polygamous.

Section 40 (1) provides:

“Where an intestate has married more than once under any system of law permitting polygamy, his personal and household effects and the residence of the net 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.

(2)

“The distribution of the personal and household effects and the residence of the net intestate estate within each house shall then be in accordance with the rules set out in Section 35 and 38”.

This task would have been less complicated if all the properties have been valued and if the different beneficiaries have not been in possession of various properties whereby they have undertaken various development activities. Dislocating them from their homes will be unfair and not only against the interest of the parties but also unjust.

As regards the issue of whether the court should make a specific allocation to each beneficiary, this is quite answered by the above provisions of the law. My task is to allocate the assets to particular household and thereafter the shares for the beneficiary in the case of a widow shall have a life interest and thereafter to her children in equal shares. In respect of the 1st widow who has passed away the portion for that household can be held by all the beneficiaries in equal shares.

As regards the list of beneficiaries I see no variance in the three proposals thus the following are the survivors of the deceased.

1st house – Rebecca Nyakaru Nyongo’s Children

1. James Karuri (Deceased but survived by widow Naomi Waithera Karuri and 3 children).
2. Mary Wambui
3. Samuel Kagucia
4. Elizabeth Njeri
5. Eunice Thoma
6. Moses Njoroge
7. Dorcas Wanjiru

2nd House – Monica Murugi Nyongo’s Children

1. Isaack Karuri
2. J. Thoma Njoroge
3. Simon Kimata
4. Samuel Njoroge
5. George Wachira
6. Patrick Kamweti
7. Eliud Ndungu
8. Margaret wacuri (deceased with no survivor)
9. Hannah Njeri
10. Samuel Chege

3rd House Hannah Wanjiru Nyongo’s Children

1. Mary Thoma
2. Joseph Karuri (Son deceased but survived by a daughter)
3. David Maina
4. Njoroge Nyongo
5. John Muiruri (deceased and no survivor)
6. Samuel Ndungu

From the above, it is clear that the 1st house can be regarded to have 7 children, the second house 9 children and 5 children for the 3rd house respectively while taking the widows as an additional units.

There is no big variance between the list of assets that belonged to the deceased and in this regard I wish to consider the list of assets filed on 9th March 2005 by the firm of P.K. Njoroge & Co. Advocates as the existing free properties/assets belonging to the deceased. This list includes commercial properties, some are developed and income generating and others are undeveloped. It also includes Agricultural land and farms and residential homes of the beneficiaries.

COMMERCIAL PROPERTIES AND BUILDINGS

1. Plot No. 163 Ruiru Town (Gachigu) developed vlued at 14,000,000/= and rent per month imputed at Kshs.120,000/=
2. Plot No. 125/60 Ruiru Town (given value 2,500,000/=)
3. Plot No. 125/52(deceased ½ portion valued at 1,500,000/=)
4. Plot No. 125/62 deceased ¼ portion valued for 1,250,000/=

5. Mombasa LRXVIII/257 (Top safety) (valued at 14,000,000)
6. Plot No. XVIII/112 & 113 Mombasa ($\frac{1}{2}$ share valued at Kshs.4,750,000/=)
7. Plot 1 acre at Kiamumbi Estate within Kiambu Municipality (valued at Kshs.1,000,000/=)
8. Plot No. 7 Gatundu Township ($\frac{1}{2}$ share valued at Kshs.1,000,000/=)

AGRICULTURAL LAND

9. Kiganjo/Hadege/1138 (9 acres)
10. Kiganjo/Hadege 1334 (9 acres coffee)
11. Kiganjo/Hadege 1164
12. Ngenda/Ituri/258 3 acres
13. Ngenda/Gituru/T258 1 acre
14. Ngenda/Ituru/136 3 acres
15. Ruiru East/4817 – 3 acres
16. Ruiru East/Juja/3494 3 acres
17. Ruiru East/Juja 3439 3 acres
18. 125 acres LR No. 74/8/2 homestead of the beneficiaries.

SHARES

19. 48 Shares Kenya Breweries Ltd.
20. 100 shares Barclays Bank of Kenya
21. 25 shares Gatwanyaga namely No. 232
22. Two shares Kiganjo Muranga Co. No. 164
23. 1000 shares Msambweni Oil Company Mombasa
24. Six (6) acres – Mombasa – Thathini Oil Co.
25. 20 shares Nanyuki Eleri Ranch
26. $\frac{1}{4}$ (quarter) plot No. 238
27. Ten (10) acres Longonot Wireri Company Certificate No. 98

IMMOVABLE PROPERTIES

28. Motor vehicle KRY 794 Pick up (valued at 52,000/=)
29. Motor vehicle KJP 656 Peugeot 404 valued at 45,000/=

30. One compressor mixture valued at Kshs.500,000/=

DISPUTED PROPERTY

31. 169 herds of sheep and goats

32. 85 herds of cattle

33. 3 acres opposite Ruiru High School (taken up by road reserve)

The above could be a summary of the deceased main assets which includes a bank account where the rental income is received.

I have gone through the three prepared schedules of distribution and what seems to stem the dispute is the distribution of the commercial properties. It is more or less agreed that the parties can keep their rural homes as well as the respective shares of the Ruiru homestead plot No. 7418/2 Ruiru.

I would therefore not wish to disturb the mode of distribution in respect of this plot save to direct that the administrators should effect the respective transfers for each house to get their title in accordance with their own developments.

As regards the rural plots there is also a kind of an agreement that each house should keep the portions of land where they have developed their rural homes thus

REBECCA NYAMBURA'S HOUSEHOLD should keep

LR No. Ngenda/Ituru 178 – 3 acres

Ngenda/Ituru T 136 ¼ acre

Juja Farm 3 acres

MONICA MURUGI NYONGO household

Kiganjo/Hadege Plot No. 1138 9 acres

Kiganjo/Hadege Plot No. 1334 3 acre

Juja Farm 3 acres

3RD ADMINISTRATOR HANNAH WANJIRU NYONGO

Ngenda/Ituru 258 3 acres

Ngenda/Ituru 136 1 acre

Juja Farm 3 acres

The most contention issue for consideration is the mode of distribution of the commercial plots especially due to their varied valuations and state of development and their income generating capacity. Whichever way one looks at these properties it is not possible to allocate each house a viable commercial property on their own. There are some considerations to take and in this regard, it is my humble view that the three main commercial plots namely two developed plots in Mombasa and Ruiru that are income generating should go to the three houses, so that in the event that they wish to keep the properties the rent can be shared at the ratio of $\frac{8}{26}$, $\frac{10}{26}$, $\frac{6}{26}$ in respect of each household and should they desire to sell the same,

the proceeds can be shared at the same ratio.

It would appear that the 2nd and 3rd Administrators are in agreement on how the Msabweni Beach plots should be shared that is each household 1 acre and the shares be owned at the ration of

$\frac{1}{3}$ per household and in my humble view nothing should turn on this proposition.

As regards the other plots No. 125/60 and 155/52 Ruiru as well as the Gatundu and Kiambu plot. I am of the considered view that each household should own a plot on their own as follows:

a) Plot No. 125/60 Ruiru (Mukawa)

Monica Murugi's household

b) Plot No. 125/52 ruiru Town

Hannah Wanjiru household

c) Plot No. 7 Gatundu Plot in Kiamumbi estate , Ngenda/Githunguri Gatundu Town all in the household of Rebecca

The proposal by the 2nd administrator as regards the shares of the deceased which are proposed to be distributed to the 3 houses in equal shares to me looks fair and would modify and adopt that mode of distribution by emphasizing that the shares be equally distributed to the 3 households.

For purposes of clarity there are the orders as to how the estate of the deceased should be distributed.

COMMERCIAL PLOTS

1.

a) Plot No. 163 Ruiru Town (Gacheingu)

b) Mombasa LR No. XVII/257 (Top Safety)

c) Mombasa Plot No. XVII/122 (Visitors Inn)

To vest upon the three Administrators the 14 Administrators to hold in trust of himself and his household while the 2nd and 3rd Administratrix shall have a life interest and thereafter to their respective children at the ratio of 1st house $\frac{8}{26}$, $\frac{10}{26}$ and $\frac{6}{26}$ respectively.

2. LR No. 7418/2 Ruiru

To be shared among the three houses equally (I have taken into consideration that the house of Monica has a larger share of land being 9 acres of Kiganjo/Hadege/1138)

Each Administrator to hold on behalf of their household as above.

3(1) AGRICULTURAL LAND

House of Rebecca Nyakeru

a) LR No. Ngenda/Ituru/178

b) Ngenda/Ituru T 136

c) Juja Farm 3 acres

3(2) House of Monica Murugi Nyonga

a) Kiganjo/Hadege plot No. 1138

b) Kiganjo/hadege plot No. 1334

c) Juja Farm 3 acres

3(3) House of Hannah Wanjiru

a) Ngenda/Ituru 258 3 acres

b) Ngenda/Ituru 136 1 acre

c) Juja Farm 3 acres

PLOTS

a) Msabweni Beach plot each house 1 acre

b) Plot No. 125/60 ruiru house of Monica Murugi

c) Plot No. 125/52 ruiru house of Hannah Wanjiru

d) Plot No. 7 Gatundu

Plot at Kiamumbi

Ngenda/Githunguchi Gatundu Town house of

Rebecca Nyakeru

SHARES

a) Kenya Breweries and Barclays Bank shares (all the houses equally)

b) 25 shares at Gatuanyaga (all the houses in equal shares)

c) Mombasa (Msabweni 125 acres) to all the houses at the ratio of $\frac{8}{26}$, $\frac{10}{26}$ and $\frac{6}{26}$

d) Mombasa Thathini 6 acres all the houses in equal shares

e) Longonot 25 acres to all the houses in equal shares

f) Nanyuki 25 acres to all the houses in equal shares

g) Kiganjo Mbili to all the houses in equal shares

The movable properties some their values could not be established or they are depreciated beyond valuation namely motor vehicles, machinery and livestock should remain with the respective widows.

Costs of this litigation be in the cause.

Judgment read and signed on 3rd February 2006.

MARTHA KOOME

JUDGE