



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA
AT NAKURU
Succession Cause 402 of 2000

IN THE MATTER OF THE ESTATE OF N B. K – DECEASED

J K N.....PETITIONER

VERSUS

A C.....OBJECTOR

JUDGMENT

N M K (*hereinafter referred to as the deceased*) died on the 18th of August 2000 at Nakuru District. On the 18th of September 2000, J K N, a son to the deceased, (*hereinafter referred to as the petitioner*) applied to this court to be granted letters of administration to administer the deceased's estate. In form P&A 5, the petitioner listed the beneficiaries of the deceased's estate as;

- (a) J K N
- (b) L N
- (c) M N
- (d) G W
- (e) J N
- (f) A W N

The properties that comprised the estate of the deceased were listed as;

- (a) Nakuru Municipality [particulars withheld]
- (b) Nakuru Municipality [particulars withheld]
- (c) Kiambogo/Kiambogo [particulars withheld]
- (d) Kiambogo/Kiambogo [particulars withheld]
- (e) Kiambogo/Kiambogo [particulars withheld]
- (f) Motor vehicle registration No. [particulars withheld], Peugeot [particulars withheld] Station

Wagon.

- (g) Kapsaret/Kapsaret [particulars withheld]
- (h) Bank account No. [particulars withheld] (Savings Account) Standard Bank Nakuru

The petitioner was issued with letters of administration to the estate of the deceased on the 25th of October 2000. The said letters of administration were confirmed on the 12th of March 2001 to the petitioner and L N N when the petitioner made an application before court for the confirmation of grant before the expiry of six months because, as he deponed in the supporting affidavit, he needed money from the deceased's account to pay for the school fees of a beneficiary of the deceased called J N N. In the said application for confirmation of grant, the petitioner listed himself as the sole beneficiary of the deceased's estate. He therefore inherited the entire estate of the deceased. According to the evidence which was adduced in court during the trial that I will refer to hereinafter, the petitioner immediately registered himself as the owner of all the properties that comprised the deceased's estate.

On the 20th of June 2001, Anne Cheptoo Ngugi (*hereinafter referred to as the objector*) filed an application under the provisions of **Sections 76 and 83 (e), (f) & (g) of the Law of Succession Act** seeking to have the letters of administration which were granted to the petitioner and confirmed to the petitioner and L N N to be annulled or revoked due to the fact that objector deponed that the petitioner had fraudulently obtained the said letters of administration by concealing the full list of the beneficiaries of the deceased's estate and further by failing to obtain the consent of all the beneficiaries of the deceased's estate. From the time the objector filed the said objection proceedings, much water has passed under the bridge. The parties to these objection proceedings finally agreed to have the objection proceedings determined by the parties adducing *viva voce* evidence.

The objector testified that she was married to the deceased in 1974. She moved into the deceased's parcel of land known as *Kapsaret/Kapsaret [particulars withheld]* in 1976. She resided on the said parcel of land with the deceased as husband and wife. They were blessed with four children namely;

- (a) G K N born in 1976
- (b) P W N born in 1978
- (c) J KN born in 1982
- (d) M M N born in 1983

She testified that when she got married to the deceased, she knew that the deceased had another wife with whom they were blessed with nine children, three sons and six daughters. The co-wife to the objector resided on a six acre piece of land which the deceased had purchased for her. The deceased built a house for his first wife on the said parcel of land. She testified that his co-wife died in 1998. It was her testimony that the deceased used to live alone in a residential property at Ponda Mali estate in Nakuru Municipality. The objector was aware of the properties that were owned by the deceased. She recalled that after the death of the deceased, the family met and agreed that the petitioner would apply for letter of administration to the deceased's estate together with the objector. It was further agreed that the properties of the deceased would be distributed fairly after the issuance of the said letters of administration. The objector testified that she was shocked when she learnt that the petitioner had applied for letters of administration and excluded her family in the list of the beneficiaries of the deceased's estate. She was further shocked to learn that the petitioner had had the said properties comprised of the deceased's estate transferred to his name. It was her proposal that the parcel of land which was occupied by the petitioner's mother, should belong to the petitioner and his siblings. She further proposed that the parcel of land that she is occupying at Eldoret should be transferred to her. The other parcels of land and other properties should be equitably distributed between her family and that of the petitioner.

The petitioner called two witnesses, himself and one Samson Mbachia Munuhe. He testified that the

deceased had issued an oral will whereby he indicated that all his properties would be inherited by himself. This was because, the deceased had disagreed with the objector and some of his siblings in the period prior to his death. He testified that he took care of the deceased when he was sick before his death. He conceded that the objector was the wife to the deceased and further that the children of the objector were born of the deceased. He recalled that the deceased had stated that the shop and its contents would be inherited by the petitioner's wife, while a two and half acre farm which was not specified, but which the petitioner identified as parcel No. *Kiambogo/Kiambogo [particulars withheld] (Mwariki)* was to be inherited by him. He further testified that the deceased gave him the amount of Kshs 900,000/= which was in the account to enable him purchase a new Nissan matatu. In his view, the objector would only be entitled to the parcel of land where she was currently occupying at Eldoret. The rest of the properties would be inherited by the deceased's first family.

DW1, Samson Mbachia Munuhe testified that he was a cousin to the deceased. He recalled that the deceased summoned him sometimes in the year 2000 and told him three things; he told him that he had given the petitioner a two and a half acre piece of land. He further told him that he had given the wife to the petitioner the shop together with the plot that it was built on. He further testified that the deceased told him that he was going to purchase a Nissan matatu for the petitioner. The deceased expressed his lack of interest on what was going to happen to other parcels of land. After the death of the deceased, the family met and it was decided that the petitioner and the objector were to apply for letters of administration to administer the deceased's estate. He recalled that the objector did not object to the petitioner inheriting the properties that were willed to the petitioner by the deceased. However contrary to the agreement by the family, the petitioner went ahead and applied for letters of administration without informing the objector. He further testified that the objector went ahead and inherited the properties that comprised of the deceased's estate without informing the objector. In his opinion, the deceased's estate should be distributed as follows:

The matrimonial homes should be inherited by the occupants thereof, the town plots which comprise of sixteen rooms should be split between the two families at the ratio of 11:5. He proposed that the other properties should be split equally.

I have carefully considered the evidence that was adduced by the parties to these objection proceedings. On evaluating the said evidence, it is clear that there is no dispute as to who are the beneficiaries of the deceased's estate. For the ease of reference I will hereunder list them:

(a) J K N

(b) L N

(c) M N

(d) G W

(e) J N

(f) A W N

(g) G K N

(h) P W N

(i) J K N

(j) M M N

(k) A C N

Although the petitioner testified that the deceased made an oral will or that he transferred some of his properties to the petitioner before his death, no evidence has been adduced that satisfied this court that indeed the deceased legally transferred the said properties to the petitioner. The deceased did not make an oral will as contemplated by **Section 9 of the Law of Succession Act**. In any case, the events that took place after the death of the deceased negated the allegation that the deceased made the said oral will. This is because the petitioner blatantly disregarded the said wishes of the deceased and proceeded to 'grab' the entire property that comprised of the deceased estate.

I have taken into consideration the evidence that was adduced by the parties in this case and I will in so far as possible distribute the deceased estate in accordance with the said evidence and with accordance with **Section 40 of the Law of Succession Act**. I will therefore distribute the deceased's estate as hereunder;

- (i) Parcel No. Kapsaret/Kapsaret [particulars withheld] shall be inherited by the objector on her own behalf and on behalf of her children.
- (ii) Parcel No. Kiambogo/Kiambogo [particulars withheld] shall be inherited by the petitioner on his own behalf and on behalf of all his siblings.
- (iii) Parcel No. Nakuru Municipality [particulars withheld] shall be inherited by the objector on her own behalf and her children.
- (iv) Parcel No. Nakuru Municipality [particulars withheld] shall be inherited by the petitioner on his own behalf and on behalf of all his siblings.
- (v) Parcel No. Kiambogo/Kiambogo [particulars withheld] shall be inherited by the petitioner on his own behalf and on behalf of his siblings.
- (vi) Parcel No. Kiambogo/Kiambogo [particulars withheld] shall be inherited by the objector on her own behalf and on behalf of her children.
- (vii) Since the petitioner withdrew the entire sum that was in the bank, and purchased the Nissan matatu, I will order that he shall inherit the said Nissan matatu.
- (viii) Motor vehicle registration number [particulars withheld] Peugeot [particulars withheld], Station Wagon shall be inherited by the objector on her own behalf and on behalf of her children.

I gathered from the evidence that the petitioner had transferred the entire properties that comprised the deceased's estate to himself. I hereby order that all the titles that were issued to him and that this court has now distributed to the objector shall be cancelled forthwith and in its place the objector be registered thereof. The other parcels of land that have been distributed to the petitioner and his siblings shall remain registered in the name of the deceased together with

L N N on their own behalf and on behalf of all their siblings.

Since this was dispute involving family members, there shall be orders as to costs.

DATED at NAKURU this 31st day of May 2006.

L. KIMARU

JUDGE