



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI (NAIROBI LAW COURTS)**

**Succession Cause 1373 of 2001**

**IN THE MATTER OF THE ESTATE OF LUCY NJERI NJUGUNA – (DECEASED)**

**JUDGMENT**

The deceased Lucy Njeri Njuguna left a written will on her death. She bequeathed all her properties to her daughter Elizabeth Mbithe Njuguna the Executrix in this cause.

The validity of the said Will was tested and was upheld by Judgments of 8<sup>th</sup> November, 2002 and 13<sup>th</sup> December, 2002.

Before the confirmation of the grant of Probate was obtained the applicant Veronicah Wanjiru Macharia applied for reasonable provision as a dependant. This application dated 14<sup>th</sup> January, 2004 is before me to be heard and determined.

It is not in dispute that the applicant and the executrix both were daughters of the deceased and the executrix was not married while the applicant is married. They both have children. The youngest child of the applicant is 18 years of age and that of the executrix is 20 years old.

The deceased died on 3<sup>rd</sup> January, 1999 and the written will was made on 2<sup>nd</sup> June, 1998.

The Applicant relies on four affidavits filed in support of the application. They are:

- 1. Her affidavit in support of the application sworn on 29<sup>th</sup> January, 2004.**
- 2. Her further affidavit sworn on 3<sup>rd</sup> June, 2004.**
- 3. Affidavit of Richard Njuguna Tharuba, a son of the executrix sworn on 27<sup>th</sup> June, 2006, and**
- 4. Affidavit of Margaret Wambui Njuguna sworn on 27<sup>th</sup> June, 2006.**

In short, the case of the applicant is that she is a child of the deceased, that she has maintained good relation with the deceased, that she has helped her financially; constructed a house for her and looked after her during her life and that in a family meeting held on 22<sup>nd</sup> August, 1989 the deceased agreed to give the applicant a portion admeasuring 0.95 acres together with herself (the deceased). The agreement was annexed to the affidavit of Richard Njuguna sworn on 27<sup>th</sup> June, 2006. This deponent is a son of the Respondent and has also confirmed the averments of the applicant that she helped the deceased during her

life time. He added that the Respondent, who is his mother, left for Loitoktok in 1967 leaving him with the deceased and the applicant. The Applicant according to him, started helping him and the deceased financially after she completed class 7 and got an employment at Lenana School. He further stated that in 1976 the applicant and her husband decided to construct a home for the deceased which was put up in the mid 1978. The Respondent, after the meeting of the family aforesaid on 22<sup>nd</sup> August, 1989 remained at home and did not go back to Loitoktok. In short he deponed that the Respondent did not assist the deceased at all and stayed with her son Martin Njoroge after disagreement and is still lives with him.

Similarly Margaret Wambui Njuguna, a neighbour to the deceased, confirmed in her affidavit that the Respondent stayed at Loitoktok for about 23 years and the Applicant was living with her mother, the deceased. She also confirmed the fact that Richard and the applicant put up a house for the deceased. She also talked about the meeting mentioned hereinabove and that she was shown the document by the deceased after the meeting. She also enclosed photographs of the parties during the deceased's funeral.

However, the applicant has stated that she only wants 0.50 acres from the deceased's property as a token of love and blessings from her mother.

The Respondent strongly objected to the application stating that the will having been declared valid and thus the wishes of the deceased should be adhered to.

She relies on her two affidavits sworn on 1<sup>st</sup> April, 2004, and 4<sup>th</sup> July, 2006 with that of her son Martin Njoroge and that of Wainaina Ndungu both also sworn on 4<sup>th</sup> July, 2006.

She deponed that the meeting was held when the deceased was sick and was cancelled after the written will. She also averred that the deceased and Applicant had hostile relation and because of that the deceased was not paid any dowry by the husband of the Applicant. Although she has stated that a form for consent of Land Control Board was signed to effect the transfer of the property to her by the deceased, she annexed only the letter of consent of 3<sup>rd</sup> March, 1998. It shows that the application was an undated one and was addressed to the deceased. This letter is three month prior to the date the will was executed. She accuses her son Richard of being drunk and being in collusion with the applicant. She has however steered clear of averments made as to her moving to Loitoktok by stating that she lived all her life in Kiambu District. According to her, she and the deceased put up the house from the help given by her and from the savings of the deceased.

Martin Njoroge denies that the Respondent stayed with him at any time. He also avers that the Applicant and the deceased were not in good terms and because of that her husband has not paid dowry to the deceased.

Wainaina Ndungu is uncle to the parties and reiterated in same words the averments of the applicant not being in good terms with the deceased and her husband not paying dowry to the deceased due to that reason.

He further stated that the deceased would tell him and confide in him anything concerning her children.

These are the evidence before me.

I may point out that the facts, deponed as regards the applicant's husband having not paid dowry to the deceased, would have effect on the validity of the marriage of the applicant as per the custom and effectively would make her an unmarried daughter.

It also comes out clear that the son of the respondent and herself are not in good terms with Richard who swore an affidavit in favour of the case of the Applicant. I also note that manner in which clear averments of the Respondent being in Loitoktok for about 23 years have been avoided by the Respondent compels me to believe on veracity thereof.

I also consider the photographs of the funeral which have also not been controverted or explained to.

Considering the facts gathered from the affidavit, I do find that there is no doubt that the Applicant is a daughter of the deceased and had been helpful to the deceased during her life. I cannot accept the fact of total animosity between the applicant and the deceased. Even the uncle Wainaina who boasts of confidence of the deceased, did not mention anything on the circumstances under which the will of the deceased was executed. Furthermore, he does not say anything about the averments of the family meeting averred by the Applicant.

I thus find that the Applicant is a dependant of the deceased and, in absence of proof of anything against her, I find that a share of 0.5 acre from the estate property being parcel No.Kiambaa/Thimbigua/1695 would be reasonable provision for her under Section 26 of the Law of Succession Act (Cap 160 Laws of Kenya).

I thus order that the applicant Veronica Wanjiru Macharia be given 0.5 acre from the aforesaid estate property.

As the parties herein are sisters, I shall not make any order on cost.

Dated and signed at Nairobi, this 19<sup>th</sup> day of July, 2006.

**K.H. RAWAL**

**JUDGE**

**19.7.06**