



REPUBLIC OF KENYA

IN THE MATTER OF THE ESTATE OF THE LATE GATAMA WAWERU MURAYA (DECEASED)

HANNAH WANJIKU GATAMA.....1ST PETITIONER
VERSUS
TABITHA WANJIRA GATAMA.....2ND PETITIONER

JUDGMENT

Gatama Waweru Muraya (*hereinafter referred to as the deceased*) died on the 22nd of August, 1989. In 1990, Tabitha Wanjira Gatama (*hereinafter referred to as the 2nd Petitioner*) sought and obtained letters of administration to administer the estate of the deceased vide **Nyahururu Principal Magistrate's Court Succession Cause No.28 of 1990**. In the said petition by the 2nd petitioner to be granted letters of administration by the Nyahururu Court, the 2nd petitioner did not disclose that the deceased was married to another wife and had other children. After the 2nd petitioner obtained the said letters of administration to administer the deceased's estate, she transferred the parcels of land which were registered in the name of the deceased to various persons including herself. When Hannah Wanjiku Gatama (*hereinafter referred to as the 1st petitioner*) discovered what the 2nd petitioner had done, she applied to the High Court at Nakuru vide **Nakuru High Court Succession Cause No.200 of 1994** to have the said letters of administration revoked. According to the evidence which was adduced before this court, the High Court obliged and duly revoked the said letters of administration which had been granted to the 2nd petitioner by the Nyahururu Subordinate Court. The High Court also restricted the 2nd respondent from dealing with the parcel of land known as **Nyandarua/Oraimutia/15**.

In the year 2000, both petitioners applied to this court to be granted letters of administration to administer the deceased's estate. The said letters of administration were granted to both petitioners on the 26th of July, 2000. However a disagreement arose on how the estate of the deceased was to be distributed. On the 7th of April, 2003, both petitioners took directions before this court as to the manner in which this petition was to be heard and disposed off. They agreed that this court was to hear the dispute by the parties adducing *viva voce* evidence. On the 7th of July, 2004, the petitioners herein agreed that the issue to be decided by the court was the determination of what comprised the deceased's estate and the mode of distribution that was to be adopted to distribute the estate of the deceased. The petitioners herein are agreed as to who the beneficiaries of the deceased's estate are. The said beneficiaries are;

(i) Tabitha Wanjira Gatama (the 2nd petitioner)

Her children,

(ii) Waweru Gatama

(ii) Paul Kamuyu

- (g) Kiambogo/Kiambogo Block 1/1472 2.44 acres
- (h) Ngarua land 5 acres
- (i) Ngorika Land 2.5 acres

On the other hand, the 2nd petitioner listed the properties that were owned by the deceased to be as follows;

- (a) Nyandarua/Oraimuitia/15 30 acres
- (b) Lembus Mosop/Mumberes Block 1(Gilgil)/107&108 –12 acres
- (c) Olmoran, Ngarua 5 acres
- (d) Kiambogo/Kiambogo Block 1/1472 2 acres
- (e) Solai/Dungiri Block 3(Wanyororo)/596 1 acre
- (f) Ngorika Land 2 acres
- (g) Nyeri Land (Kiine/Kiangai/1365) 3 acres

The 2nd petitioner testified that the deceased had sold the Nyeri parcel of land before his death. However from the evidence adduced before this court, it is clear that it is the 2nd petitioner who sold the said parcel of land to one Njagi. The 2nd petitioner after obtaining the letters of administration at Nyahururu (which were revoked by this court) transferred the said parcel of land to the said Njagi. It is also apparent that the 2nd petitioner transferred some of the parcels of land to herself and some of her sons after obtaining the said letters of administration.

After evaluating the evidence that was adduced by both petitioners in this Succession cause, I do hold that the following properties will be considered to be part of the estate of the deceased for the purposes of distribution;

- (a) Nyandarua/Oraimuitia/15 33.8 acres
- (b) Lembus Mosop/Mumberes Block 1 (Gilgil)/107- 6.039 acres
- (c) Lembus Mosop/Mumberes Block 1 (Gilgil)/108 – 7.85 acres.
- (d) Nyandarua/Oraimutia/417 1 acre
- (e) Kiine/Kianga/1365 3 acres
- (f) Solai/Dungiri Block 3(Wanyororo)/596 0.2 acre
- (g) Kiambogo/Kiambogo Block 1/1472 2.44 acres
- (h) Ngarua land 5 acres
- (i) Ngorika Land 2.5 acres

In distributing the properties that comprise the estate of the deceased, I will take into account the properties that the 2nd petitioner either sold or transferred to some of her children. These properties shall be considered to have been inherited by the 2nd petitioner. Although evidence was adduced by the 2nd

petitioner to the effect that the deceased had indicated how he wished his estate to be distributed, I hold that there was no evidence to suggest that the deceased had made such a decision before his death. What is however clear is that the deceased used to reside with both petitioners in the Oraimuitia parcel of land before he purchased the parcel of land at Timboroa. It is also clear that the deceased did not discriminate among his children. That is the reason why some of the children belonging to the 1st petitioner resided on the Oraimuitia parcel of land. There is also evidence that the 1st petitioner's house at the Oraimuitia parcel of land remained unoccupied by any of the children of the 2nd petitioner and sometimes the 1st petitioner used to reside in the said house during the lifetime of the deceased.

Having evaluated the evidence adduced in this Succession Cause, I hold that the 2nd petitioner demolished the house of the 1st petitioner on the Oraimuitia parcel of land after she had obtained the letters of administration at the Nyahururu Court which were however revoked by the High Court. I will therefore apply the principle of equitable distribution in distributing the estate of the deceased to the deceased's beneficiaries. I would have applied the provisions of **Section 40(1) of the Law of Succession Act** in distributing the deceased's estate, but in view of the fact that both petitioners are agreed that the estate of the deceased should be distributed in accordance with the houses that comprise the deceased's estate, I will distribute the estate of the deceased to the two houses who thereafter shall distribute it among the children of each house. I have further been influenced in my decision by the fact that each of the widows of the deceased has the same number of children. The fact that the petitioners would inherit the portion due to the two houses of the deceased will not therefore prejudice either petitioner.

I will therefore distribute the properties that comprise the estate of the deceased to the two petitioners on their own behalf and on behalf of their children. Where the properties of the deceased were transferred by the 2nd petitioner pursuant to the revoked letters of administration, the same will be taken into account when distributing the properties that comprise the estate of the deceased. I will therefore distribute the estate of the deceased as hereunder;

- (i) ***Lembus Mosop/Mumberes Block 1 (Gilgil)/107 & 108*** measuring approximately 13.85 acres shall be inherited by the 1st petitioner.
- (ii) The 2nd petitioner sold the Nyeri parcel of land (***Kiine/Kiangai/1365***) and Parcel No.***Nyandarua/Oraimuitia/417*** to third parties. The same is considered to have been inherited by the 2nd petitioner. Evidence was adduced which confirmed that the said parcels of land were sold by the 2nd petitioner after the death of the deceased and after obtaining the letters of administration from Nyahururu Court which were later revoked by this court.
- (iii) Parcel No.***Nyandarua/Oraimuitia/15*** shall be divided into two portions;
 - (a) A portion measuring 21 acres shall be inherited by the 2nd petitioner.
 - (b) A portion measuring 12 acres shall be inherited by the 1st petitioner.
- (iv) Parcel No. ***Solai/Dungiri Block 3 (Wanyororo)/596*** shall be inherited by Paul Kamuyu Gatama.
- (v) The ***Ngarua parcel of land*** measuring 5 acres shall be inherited by the 1st petitioner.
- (vi) Parcel No.***Kiambogo/Kiambogo Block 1/1472 (Mutukanio)*** shall be inherited by Muraya, the son of the 1st petitioner.
- (vii) The ***Ngorika parcel of land*** which was sold by the 2nd petitioner and another parcel of land purchased at Njoro measuring 2 acres shall be inherited by Waweru the son of the 2nd petitioner. I have considered that the said parcel of land at Ngorika was unlawfully sold by the 2nd petitioner. The parcel of land which was bought with the said purchase consideration is therefore considered to be part of the estate

of the deceased. I therefore order the same to be inherited by Waweru the son of the 2nd petitioner.

If any subdivision or transfer not approved by this court as reflected in the subdivision scheme adopted by this court took place prior to the delivery of this judgment, then the said subdivisions and transfers are declared to be null and void. The subdivisions are ordered cancelled. The transfers and any titles issued pursuant thereof are hereby ordered cancelled. The parcels of land that comprised the estate of the deceased shall be distributed in accordance with the judgment of this court.

This being a family dispute, there shall be no orders as to costs.

DATED at NAKURU this 28th day of November, 2006

L. KIMARU

JUDGE