



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT NAKURU

Succession Cause 49 of 1996

IN THE MATTER OF THE ESTATE OF THE LATE MWAURA CHIRA – DECEASED

JOHN NJAGARA KANYI.....PETITIONER

VERSUS

MARGARET NYAMBURA KANYI.....OBJECTOR

JUDGMENT

Mwaura Chira (*hereinafter referred to as the deceased*) died on the 8th of July, 1978. On the 10th of March, 1986 John Njangara Kanyi (*hereinafter referred to as the Petitioner*) applied to be granted letters of administration to the deceased's estate. In the said application, the petitioner listed the dependants of the deceased to be Margaret Nyambura (*his widow*), Lucy Njeri Kanyi (*his daughter*) and John Njangara Kanyi, Mwaura Kanyi and Mwangi Kanyi (*his grandsons*). The only property that comprised the deceased's estate was stated to be **Plot No.99 Sabugo Settlement Scheme** measuring approximately 30 acres. On the 21st of July, 1986 the petitioner was issued with the letters of administration intestate to the deceased's estate. The said letters of administration appear not to have been confirmed.

On the 15th of June, 2005 Margaret Nyambura Kanyi, claiming to be a granddaughter of the deceased challenged the said grant of letters of administration to the petitioner. Peter Mwaura Kanyi and James Mwangi Kanyi joined her in objecting to the said letters of administration being issued to the petitioner. On the 18th of November, 2005, this court issued directions that the objection proceedings herein be determined by this court hearing *viva voce* evidence of the parties to these succession proceedings. This court further issued directions that the issues that were to be decided by this court were the determination as to who the beneficiaries of the deceased are and further the mode of distribution of the property that comprised the deceased's estate.

During the hearing of the objection proceedings, Margaret Nyambura Kanyi (*hereinafter referred to as the objector*) testified as PW1. Her father Kanyi Njangara testified as PW2 and her brother Peter Mwaura testified as PW3. It was the objector's case (*and her testimony was corroborated by PW2 and PW3*) that the deceased was her grandfather. She testified that the deceased was blessed with only one child; her mother Lucy Njoki Kanyi. She testified that when her mother got married, her grandparents lived alone on the property known as **Plot No.99 Sabugo Settlement Scheme** (*hereinafter referred to as the suit property*) until when the petitioner was of age when he was allowed by her father to go and live with her grandparents. She conceded that the petitioner lived with his grandparents i.e. the deceased and his wife until their deaths. The deceased died in 1977 whilst their grandmother died in 2002. The objector complained that when the petitioner applied to be issued with the grant of letters of administration

intestate for the deceased's estate, he excluded her as one of the beneficiaries of the deceased's estate. She further complained that the petitioner desired to inherit the entire parcel of land that constituted the deceased's estate to the exclusion of the objector and her two siblings.

She testified that attempts made by their father PW2 and members of the family to resolve the dispute as relates to the manner in which the deceased's estate was to be distributed between the petitioner and his other siblings have been in vain. This is because during such meetings, the petitioner would agree to abide by the decision arrived at but would later change his mind and refuse to subdivide the land as per the decision agreed. She testified that, for instance, on the 27th of October, 2002 the family met and agreed that the petitioner was to inherit 7 acres while the rest of the acreage was to be divided between the objector and her two brothers. She recalled that the petitioner signed the agreement but later reneged on the agreement and refused to subdivide the suit land as agreed. She testified that, in her view, the suit land should be subdivided equally between all the grandchildren of the deceased. She testified that even though she was married, as the granddaughter of the deceased, she was entitled to inherit part of the suit land.

PW2 testified that the deceased was his father in-law. He married the deceased's only child, Lucy Njoki Kanyi. He testified that he was blessed with four children; the petitioner, the objector and their two brothers. He testified that the petitioner lived with the deceased until his death. After his death, the family met and granted permission to the petitioner to apply for letters of administration to administer the estate of the deceased. He testified that when it came to distributing the deceased's estate, the petitioner ignored the wishes of the family and purported to inherit the suit land alone. He testified that the family met and made a decision to distribute the suit land to all the grandchildren of the deceased. He testified that he was not opposed to the said parcel of land being distributed to his three sons and one daughter. He further testified that he paid the loan to the Settlement Fund Trustees (SFT) which was due in respect of the suit parcel of land. He therefore urged this court to distribute the estate of the deceased to all the grand children of the deceased as was agreed by the family.

On his part, the petitioner deponed that the deceased had indicated that upon his demise the suit land was to be inherited by him. He further deponed that he was the one who took care of the deceased during his lifetime and further that he took care of his grandmother until her death. The petitioner called two witnesses DW2 Goffrey Mwangi and DW3 Patrick Maina Wanguti who corroborated his evidence that the deceased had indicated, when he was sick before his death, that upon his demise the suit land was to be inherited by the petitioner. DW3 however testified that the deceased did not state that it was only the petitioner to the exclusion of his siblings who could have inherited the parcel of land that comprised the estate of the deceased. DW3 testified that it would only be fair for the petitioner and his siblings to inherit the parcel of land that belonged to their grandfather. The petitioner insisted that since his siblings would inherit the properties of their father, it would be unfair for them to inherit also the parcel of land that belonged to the deceased. He reiterated that as he was the one who took care of his grandparents, he was the one who entitled to inherit the suit parcel of land.

I have carefully considered the evidence that was adduced by the parties to these succession proceedings. As stated earlier in this judgment, the petitioner and the objector agreed that the issues to be determined by this court were who the beneficiaries of the deceased were and who among the beneficiaries was to inherit the properties that comprise the estate of the deceased. The facts of this case are not in dispute. The deceased was blessed with one child, Lucy Njoki, the mother of the petitioner and the objector. According to **Section 38 of the Law of Succession Act**,

“Where an intestate has left a surviving child or children but no spouse, the net estate shall, subject to the provisions of Sections 41 and 42, devolve upon the surviving child, if there is one, or be equally divided among the surviving children.”

In this case therefore, it was Lucy Njoki who was entitled to apply for letters of administration to administer the estate of the deceased and also to inherit the properties that comprised the estate of the deceased.

However according to PW2 Kanyi Njagara, the husband of Lucy Njoki, the said Lucy Njoki granted permission to the petitioner to apply for letters of administration to the deceased's estate. The petitioner applied for the said letters of administration and was granted the same. When it came to distributing the estate of the deceased, the petitioner decided to exclude his siblings. According to PW2, whose testimony I believed to be truthful, his family met and made a decision that the petitioner was to inherit 7 acres out of the suit land while the remaining acreage of the suit land was to be distributed equally among the remaining grandchildren of the deceased.

Although the petitioner stated that he was entitled to inherit the entire parcel of land that comprised the estate of the deceased, I found no evidence to support his contention that because he had lived with the deceased for some time prior to his death, that he had a greater right than that of his siblings. Having evaluated the evidence, as long as the mother of the petitioner was still alive, being the only child of the deceased, the petitioner could only inherit the property of the deceased (*his grandfather*) with the permission of his mother. In this case therefore, it was established on a balance of probabilities by the objector that the only child of the deceased had indicated that the said parcel of land was to be inherited by all her children. I have perused the agreement which was produced as *objector's exhibit No.1*. I am satisfied that the said agreement which was written on the 27th of October, 2002 reflected the true wishes of the family of the deceased on how the estate of the deceased was to be distributed. The petitioner in this case signed the said agreement signifying that he had accepted its terms.

I think the petitioner became greedy as he became older when he realized that his siblings, who were minors at the time he petitioned the court to be granted letters of administration, had become of age and now required to be given portions of the suit property. The petitioner allowed one of his brothers James Mwangi to occupy a portion of the suit land but on an indeterminate acreage. I therefore hold that the agreement of the family which was entered into on the 27th of October 2002 shall be the basis upon which the properties comprising the estate of the deceased shall be distributed.

The upshot of the above reasons is that, in answer to the issues which were placed before this court for determination, I make the following orders;

(i) As to the answer as to who are the beneficiaries of the deceased's estate I hold that;

- (a) John Njagara Kanyi
- (b) Peter Mwaura Kanyi
- (c) Margaret Nyambura Kanyi
- (d) James Mwaura Kanyi

the grandchildren of the deceased are the beneficiaries of the deceased's estate.

I have excluded Lucy Njoki Kanyi, the child of the deceased, as a beneficiary of the deceased's estate because she renounced her rights to be considered as a beneficiary of the deceased's estate in favour of her children.

(ii) The estate of the deceased comprising of the property known as ***Plot No.99 Sabugo Settlement Scheme*** measuring 19 acres or thereabout shall be distributed to the beneficiaries of the deceased's estate as hereunder;

- (a) John Njagara Kanyi – 7 acres
- (b) Peter Mwaura Kanyi – 4 acres
- (c) James Mwangi Kanyi – 4 acres

(d) Margaret Nyambura Kanyi – 4 acres

If there shall be any additional acreage, the same shall be distributed to the beneficiaries of the deceased in the ratio adopted above by this court. For the avoidance of doubt, the petitioner John Njagara Kanyi shall inherit the house that used to be occupied by his grandparents prior to their deaths.

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

DATED at NAKURU this 24th day of November, 2006.

L. KIMARU

JUDGE