



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

Succession Cause 196 of 1992

**IN THE MATTER OF THE ESTATE OF THE LATE MESHULAM MAINGI GATITU
[DECEASED]**

HANNAH NYAMBURA MAINGI.....PETITIONER

VERSUS

RUTH NYAMBURA MAINGI.....1ST OBJECTOR

SUSAN WANJIRU MAINGI.....2ND OBJECTOR

JUDGMENT

Meshulam Maingi Gatitu (*hereinafter referred to as the deceased*) died on the 28th of September, 1991. On the 8th of September, 1992 Hannah Nyambura Maingi (*hereinafter referred to as the petitioner*) claiming to be a widow of the deceased, petitioned this court to be granted letters of administration to administer the deceased's estate. The petitioner listed herself and her twelve children as the only beneficiaries of the deceased's estate. Upon gazettment of the petition, Ruth Nyambura Maingi and Susan Wanjiru Maingi, other widows of the deceased, (*hereinafter referred to as the objectors*) filed objection to the petitioner being issued with the letters of administration to administer the deceased's estate. On the 6th of December, 1993, the petitioner and the objectors agreed by consent for the letters of administration in respect of the deceased's estate to be granted jointly to the petitioner and the objectors i.e. Hannah Nyambura Maingi, Ruth Nyambura Maingi and Susan Wanjiru.

The petitioner and the objectors could not however agree on how the deceased's estate was to be distributed. Directions were taken before Ondeyo J. she directed that the issue as regard the distribution of the deceased's estate was to be determined by the court hearing *viva voce* evidence. The petitioner and the objectors testified before Ondeyo J. The objectors called Norman Muiruri Kinyanjui, a retired Chief of Pasenga Location who testified on their behalf. After the close of the petitioner's and the objectors' case, the parties filed written closing submissions in support of their respective cases. Ondeyo J, however retired before she could deliver the judgment. On the 22nd of October, 2004, the parties to this objection proceedings agreed by consent that this court writes the judgment based on the proceedings that were taken by Ondeyo J.

This court has endeavoured to do its best to deliver the judgment based on the testimony of the witnesses who testified before Ondeyo J. However from the outset, this court concedes to the fact that it

has written this judgment without putting into consideration the respective demenours of the witnesses who testified before Ondeyo J. This is a limitation the parties to this succession cause have accepted when they requested this court to write the judgment based on the proceedings taken by another judge.

What are the issues in dispute in this case? There is no dispute, from the evidence adduced by the petitioner and the objectors, that the deceased was married to three wives. Hannah Nyambura Maingi was the 1st wife whilst Ruth Nyambura Maingi and Susan Wanjiru Maingi were the 2nd and 3rd wives respectively. There is no dispute as to who are the beneficiaries of the deceased's estate. The petitioner and the objectors are agreed that the estate of the deceased should be distributed in accordance with the three houses of the deceased. It is evident from the testimonies of the petitioner and the objectors that the deceased, after initially living with his three wives in his parcel of land at Passenga, settled each wife on a separate parcel of land. The deceased even transferred the different portions of land in the respective names of the wives who resided on the said parcels of land.

Only one parcel of land namely **Mau Summit/Sachangwani/Block 4/17 (Valley Farmers)** was left registered in the name of the deceased. Whereas the petitioner is contending that she is entitled to inherit the said parcel of land, the objectors on the other hand are insisting that the said parcel of land be distributed equally between the three widows of the deceased because they are of the view that the deceased had transferred parcel No.Nyandarua/Silanga/83 to the petitioner. They are thus contending that parcel No.**Mau summit/Sachangwani/Block 4/17(Valley Farmers)**, which was the only land which was registered in the name of the deceased should be distributed equally between them. On her part, the petitioner contended that parcel No.**Nyandarua/Silanga/83** belonged to her and not the deceased. She contended that she had purchased the said parcel of land using her own resources. She denied the contention by the objectors that the said parcel of land was bought for her by the deceased.

The issue for determination by this court therefore is what properties comprised the deceased's estate and what mode of distribution should be adopted by the court to distribute the estate of the deceased. According to the evidence which was adduced by both the petitioner and the objectors the deceased owned the following properties;

- (i) Solai Kirima/Block 2/48 (Valley Farmers) measuring 8.092 Hectares (*Approximately 20 acres*). This parcel of land is registered in the name of the 2nd objector Susan Wanjiru Maingi. It was transferred by the deceased to the 2nd objector just before his death.
- (ii) Solai Kirima/Block 2/75 (Valley Farmers) measuring 9.837 Hectares (*approximately 24.5 acres*). This parcel of land is registered in the name of the 2nd objector Susan Wanjiru Maingi. It was similarly transferred to the 2nd objector shortly before the death of the deceased.
- (iii) Solai Kirima/Block 2/21 (Valley Farmers) measuring 3.679 hectares (*approximately 9 acres*). This parcel is registered in the name of the 2nd objector Susan Wanjiru Maingi. It was similarly transferred to her shortly before the death of the deceased.
- (iv) Mau Summit/Sachangwani Block 4/17 (Valley Farmers) measuring 5.839 hectares (*approximately 14.5 acres*) registered in the name of the deceased.
- (v) Nyandarua/Passenga/1 measuring 17.5 hectares (*approximately 43.3 acres*). The parcel of land is registered in the name of the 1st objector Ruth Nyambura Maingi. It was transferred to her on the 21st of March, 1999.
- (vi) There is the contentious parcel No.Nyandarua/Silanga/83 which the petitioner claims is her parcel of land and does not comprise part of the estate of the deceased. This parcel of land was registered in the names of the petitioner on the 26th of February, 1985 and measures 12.5 hectares (*approximately 31 acres*).
- (vii) Parcel No. L.R 584/112 Londiani which is a commercial plot with several buildings owned

jointly by the deceased and one Ibrahim Kibe Gatama.

- (viii) Molo South parcels of land i.e. Haraka Farm Mau Summit measuring 3 acres and Haraka Farm, Molo South measuring 5 acres where the sons of the petitioner known as Gititu and Wamatu reside.
- (ix) A 3 acre parcel of land at Ngarua.
- (x) B.A.T Shares jointly owned by the deceased and one Ibrahim Kibe Gatama.
- (xi) Kenya Breweries Limited Shares owned jointly by the deceased and Ibrahim Kibe Gatama.
- (xii) KCC Shares registered in the name of the deceased only.
- (xiii) The deceased had two bank accounts with Barclays Bank Ltd; one account was maintained at Nakuru East Branch while another account was maintained at Molo Branch.

As stated earlier in this judgment, whereas the petitioner contends that parcel No.*Nyandarua/Silanga/83* belonged to her and not to the deceased, the objectors are of the view that the said parcel of land belonged to the deceased and was only registered in the name of the petitioner because at the time when the land was being allocated by the Settlement Fund Trustees (SFT), there was a requirement that only one parcel of land would be allocated to one family. To circumvent this requirement, the deceased registered the said parcel of land in the name of the petitioner. I have evaluated the evidence adduced in respect of this matter in dispute. Taking into consideration the subsequent conduct of the deceased in transferring his parcels of land to the objectors, I hold that parcel No.*Nyandarua/Silanga/83* belonged to the deceased but was registered in the name of the petitioner due to the legal requirement at the time that the deceased could only have been registered as the owner of one parcel of land which was being allocated by the SFT.

The decision of this court is supported by the testimonies of both the petitioner and the objectors who testified that at no time had the petitioner resided on the said parcel of land during the life time of the deceased. Evidence was adduced to the effect that the three wives of the deceased used to reside in parcel No. *Nyandarua/Passenga/1* with the deceased before the deceased made the decision to settle each wife on a separate parcel of land. I therefore hold that parcel No.*Nyandarua/Silanga/83* belonged to the deceased and is therefore available to be considered when the estate of the deceased is being distributed.

Having found that parcel No.*Nyandarua/Silanga/83* was part of the deceased's estate and therefore available for distribution, I will distribute the deceased's estate as hereunder; The petitioner and the objectors are agreed on the mode to be adopted to distribute the deceased's estate. They are agreed that the deceased's estate should be distributed more or less equitably in accordance to the three houses that comprised the estate of the deceased. As stated earlier in this judgment, the deceased had transferred certain parcels of land to his wives prior to his death. In my opinion, by transferring the said parcels of land to his wives, the deceased gave an indication on how he intended to distribute his estate to his beneficiaries. The complaint by the petitioner that the objectors got a larger parcel of land than her has to be addressed when distributing the remaining portion of the deceased's estate.

I have taken into consideration the evidence that was adduced by the petitioner and the objectors. I have also considered the written submission that was filed by the petitioner in this case. I will distribute the estate of the deceased, firstly in accordance with the wishes of the deceased and secondly, so that a fair and equitable distribution of the deceased's estate may be achieved. The estate of the deceased shall therefore be distributed as follows;

- (i) The Petitioner Hannah Nyambura Maingi and her children shall inherit;
 - (a) *Parcel No.Nyandarua/Silanga/83 measuring 12.5 hectares (approximately 31 acres).*
 - (b) *Parcel No.Mau Summit/Sachangwani Block 4/17 (Valley Farmers) measuring 5.839 hectares or*

approximately 14.5 acres.

- (ii) The 1st Objector Ruth Nyambura Maingi and her children shall inherit parcel No.Nyandarua/Passenga/1 measuring 17.5 hectares or approximately 43.3 acres.
- (iii) The 2nd Objector Susan Wanjiru Maingi and her children shall inherit;
 - (a) *Solai Kirima/Block 2/21 (Valley Farmers) measuring 3.679 hectares approximately 9 acres.*
 - (b) *Solai Kirima/Block 2/48 (Valley Farmers) measuring 8.092 hectares approximately 20 acres.*
 - (c) *Solai Kirima/Block 2/75 (Valley Farmers) measuring approximately 9.837 hectares approximately 24.5 acres.*
- (iv) The portion of Parcel No.L.R 584/112 Londiani, owned by the deceased shall be inherited by Ruth Nyambura and her children.
- (v) The Molo South parcels of land measuring 5 acres and 3 acres respectively shall be inherited as follows;
 - (a) *The 5 acre parcel of land shall be inherited by Susan Wanjiru Maingi.*
 - (b) *The 3 acre parcel of land shall be inherited by Hannah Nyambura Maingi.*
- (vi) The Ngarua parcel of land measuring 3 acres shall be inherited by Ruth Nyambura Maingi.
- (vii) The shares at B.A.T, Kenya Breweries Limited, KCC Limited, and the accounts held at Barclays Bank Limited Nakuru East and Molo Branches shall be distributed equally between the petitioner and the objectors. In respect of the shares, I direct that they be sold and the proceeds therefrom be distributed among the three houses that comprise the estate of the deceased.

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

DATED at NAKURU this 14th day of November, 2006

L. KIMARU

JUDGE