



REPUBLIC OF KENYA
HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)

Succession Cause 2325 of 2000

IN THE MATTER OF THE ESTATE OF JOSEPHINE WANJIKU KIBE (DECEASED)

JUDGEMENT

Daniel Migwi Kibe applied and was granted the letters of Administration in respect of the estate of the late Josephine Wanjiku Kibe (deceased) who died on 16/6/95. This was done before the Kiambu Senior Principal Magistrate's Court P&A Cause No. 302 of 1996. The grant of letters of Administration intestate was issued on 4th May, 1999 and was subsequently confirmed on 5th June, 2000. According to the Certificate of confirmed grant, the deceased land parcel No. NYATHUNA/KIKUYU/1504 was to be shared as follows: -

- a) Daniel Migwi –0.083 acres
- b) Josphat Kariuki Kibe –0.083 acres
- c) Fredrick Kibe Migwi (grandson) –0.156 acres
- d) Mary Mugure Nyanjui –0.07 acres
- e) Monica Mirigo Kibe –0.288 acres.

This Certificate of Confirmed grant and the mode of distribution seem to have sparked instant objection and on 24th October, 2000, the Summons for Revocation was filed by Monicah Mirigo Kibe, Henry Kiaraho Kibe, David Ndungu and Josphat Kariuki Kibe. They all swore affidavits in support of the application for revocation. When the Summons for revocation came up for hearing before Hon. Aluoch J. on 2nd April, 2003, the grant of letters of Administration issued to Daniel Migwi Kibe on 3rd May, 1999 and confirmed on 5th June, 2000 was revoked and another grant of letters of Administration of the deceased estate was issued to Daniel Migwi Kibe and Josphat Kariuki Kibe. The court further directed that the family should agree on the mode of distribution.

It would appear that Monica Mirigo Kibe convened a meeting of clan members on 7/6/2003, which was attended by the following people: -

- a) Phares Kairu Kariuki
- b) Paul Kiaraho Njuguna
- c) Wilfred Nganga Kiongo

- d) Godfrey Kairu Gathage
- e) Francis Gathage Kairu
- f) David Ndungu Kibe.

This meeting took place before Benjamin M. Munyua, the Senior Chief Nyathuna Location. The meeting came up with a resolution that was produced as exhibit No. 2 whereby they resolved that the deceased parcel of land Known as Kabete/Nyathuna/1504 be inherited by Monica Mirigu Kibe absolutely because the deceased had already transferred to her sons their portions of land. However, this resolution was not accepted by the administrators. They rejected the resolution on the grounds that the meeting was attended by none clan membes and further they objected to Monica Mirigu being the sole beneficiary of land parcel No.Kabete/Nyathuna 1504. Hence, on 7th July, 2003, the administrators filed the present summons for confirmation and proposed that the deceased estate be shared as follows: -

- a) Daniel Migwi Kibe –0.161 of an acre
- b) Josphat Kariuki Kibe –0.161 of an acre
- c) Mary Mugure –0.07 of an acre
- d) Monica Mirigo –0.288 of an acre

This mode of distribution was protested by Monicah Mirigo and David Ndungu Kibe both of whom filed the affidavits of protests. During the hearing of the affidavits of protests, oral evidence in addition to applicant's affidavits was adduced to determine the twin issues in dispute over, how the deceased estate being Title No. Kabete/Nyathuna/1504 should be distributed and who should benefit from the deceased estate.

I have given due consideration to the oral evidence, all the affidavits that were filed and I have gone through in considerable details the Succession Cause File at Kiambu No. 302/1996 the estate of Josephine Wanjiku and Succession Cause No. 153/1989 the estate of Fredrick Kibe Kiaraho. It is not in dispute that the suit premises that is parcel No. Nyathuna/Kikuyu/1504 was a sub-division of Title No. Kabete/Nyathuna/355 measuring 3.2 acres which was registered in the names of Kibe Karanja (deceased) the husband of the deceased and father of the parties herein.

Following a Succession case and by way of transmission, that parcel of land was divided into 5 equal portions and the deceased sons all got their share as follows:-

- a) David Ndungu Kibe
- b) Daniel Migwi Kibe
- c) Josphat Kariuki Kibe sons of the deceased
- d) Henry Kiaraho Kibe
- e) Josphine Kairuki Kibe – widow

According to the protesters, their father had summoned all his sons in the presence of the deceased and gave his wishes on how his land should be shared equally between the sons and their mother. However, the portion that was to go to their mother was supposed to be held in trust for the unmarried daughters and or any daughter who should be divorced by her husband. Since Mary Mugure Nyanjui and Margaret Hoini Njenga were married, this parcel of land should go to Monica Mirigu absolutely. This was opposed by the administrators Daniel Migwi and Josphat Kariuki whose motion was supported by Henry Kiaraho. They support the Administrators mode of distribution.

They have disowned the affidavit sworn on 27th October, 2000 whereby, they supported the fact that the suit premises should go to Monica Mirigo on the grounds that they did not understand the full import and implication of the matters deposed to therein. According to them, Monica was not getting on with their late mother well as she had abandoned their mother to go and live in the shopping centre when their mother was ailing and therefore she should not get the entire share of the land.

When the whole evidence is taken into totality, one issue cuts across the testimony of all the witness, that the suit premises was transferred to the deceased after the sons were all allocated an equal share of their respective portions from the deceased's parcel of land except for the daughters. This having been a transfer by transmission, the deceased being a widow was having a life interest and the residue would revert to the estate of the late Fredrick Kibe Kiaraho. Among the children of the late Fredrick Kibe Kiaraho, the four sons have clearly received a portion of their shares. The only remaining beneficiaries are the three daughters of the deceased. Among the three daughters, Margaret Hoini had sworn an affidavit on 12/9/2003, and has duly renounced her interests over the deceased estate. However, Mary Mugure has stuck to her claim of 0.07 of an acre, which parcel of land she claims to have been in exclusive occupation along the riverbed. I have carefully evaluated this matter and also the affidavit that was sworn by Henry Kiaraho Kibe, David Ndungu Kibe and Josphat Kariuki Kibe on 24th October, 2000 especially the contents of paragraph 4 and 5 which states

4. " That the applicant herein who is our sister is not married and it was mutually agreed when our mother died that the portion of land which belonged to her i.e. KABETE/NYATHUNA/1504 ought to go to the Applicant who had been living with the deceased before her death"

5. "THAT a clan meeting was held on 2nd July, 1995 whereby it was agreed that our sister the Applicant herein was to get the said property"

I am not able to comprehend why two of the deponents changed their position, was it an after thought, or was it because Josephat Kariuki has been given 0.161 of an acre in the proposed sub-division, whatever the case, it is my humble view that the suit premises which was part of the estate of Fredrick Kibe Kiaraho- deceased should be shared amongst his children who did not get a share. Since Margaret Hoinie has renounced her interest, this parcel of land should be shared among the two daughters Mary Mugure who has stated that her claim is for 0.07 of an acre. The rest of the parcel of land should go to Monica Mirigu absolutely.

Accordingly, the grant of letters of Administration should be confirmed as above. This being a family dispute, I order that each party should bear their own costs forthwith.

It is so ordered

Judgement read and signed on 21st January, 2005

MARTHA KOOME

JUDGE