



**REPUBLIC OF KENYA
IN THE HIGH COURT OF AT NAIROBI
SUCCESSION CAUSE 1300 OF 2001**

IN THE MATTER OF THE ESTATE OF JAMES NYORO GICHIA (DECEASED)

ELIZABETH MUGURE NYORO.....OBJECTOR/APPLICANT

VERSUS

GEORGE GICHIA.....OBJECTOR

FRANCIS THOGO GICHIA RESPONDENT

J U D G M E N T

The joint Administrators of the estate of the late James Nyoro Gichia (deceased) who died on 29th June, 1994 intestate applied for the confirmation of the grant made on 4th December, 2001.

According to the Supporting Affidavit sworn by the 1st Administrator, the deceased was survived by the 1st Administrator who is his son and two grand sons namely Francis Thogo Gichia and the late George Gichia Nyoro a son who died and was survived by his widow, the protestor herein Elizabeth Mugure Nyoro with her 7 children. The Petitioner propose to have the estate of the deceased being a parcel of land measuring about 8.3 acres distributed as follow:

- 1. Limuru/Bibirion 2164 measuring 2 acres – George Gichia Nyoro**
- 2. Limuru/Bibirioni 2167 measuring 2.3 acres – Elizabeth Mugure Nyoro the protestor to have a life interest and hold in Trust of her 7 children.**
- 3. Limuru/Bibirion measuring 2 acres to Francis Thogo Gichia**
- 4. LR. NO. Limuru/Bibirion 2164 2 acres to the Catholic Arch Diocese of Nairobi.**

Elizabeth Mugure Nyoro filed on affidavit of protest and directions were given to the effect that this matter be determined by way of oral evidence and the sole issue for determination was how Title No. Limuru/Bibirion/2164 should be distributed to the Beneficiaries.

The Administrator relied on evidence from 5 witnesses in addition to their own testimony.

According to the petitioners and their witnesses, the deceased indicated how he intended to distribute his only parcel of land which measures approximately 8.3 acres and it was subdivided into 4 separate portions prior to his death.

The deceased is said to have summoned his son, two grand sons and Joseph Muchai Kahuri (PW4) when he dictated and the wishes were recorded on a piece of paper which was produced as an exhibit and the land was shared as follows.

1. Deceased and his wife – 2 acres

2. George Gichia Nyoro – 2.3 acres

3. James Nyoro Gichia – 2 acres

4. Francis Thogo Gichia – 2 acres

Subsequently, according to the Petitioners the deceased bequeathed one acre of the portion he allocated to himself and his wife to the 1st petitioner and the other one acre to his daughter Teresia Wambui Njoroge (PW2) a married daughter.

According to (PW2) she sold her share of one acre to Francis Thogo due to the fact that she is married and lives in Kinangop and she could not manage to cultivate this parcel of land. The family had agreed that the members of the family should be given the first option.

Thus when the petitioners obtained the letter of Administration, the family agreed that this parcel of land should be sold to the local Catholic Church and by a letter which was signed by the three Beneficiaries they requested the Father in Charge to make the payment cheque payable to Marion Nduta Gichia (widow of the deceased) this letter is dated 12/5/00 and is part of the applicants on record.

The petitioners were categorical that the protestor having received a larger share of 2.3 acres should not reach out to benefit from the remaining two acres and that the proceeds of sale should not be shared with her.

On the other had the protestor insisted that the 2 acres was co-owned between her late husband, his brother in law and father in law. She denied that (PW2) a married daughter of the deceased should have any claim of her father's estate and dismissed the evidence of the petitioner and their witnesses as a mere fabrication meant to defraud her of her interest in the proceeds of the sale. She also review on the evidence of Joseph Itotia who annexed copies of the minutes a meeting held 10/9/00 with the petitioners and where the sale transaction was discussed. However, the Father in Charge of the Catholic Church (PW5) disowned the minutes which were not signed by the Chairman and confirmed that DW2 had no mandate or authority to act and transact any business on behalf of the Chairman. The evidence by DW2 is of no consequence and so is the copy of the unsigned minutes. I have given careful consideration to all the issues raised in the succession cause to wit.

- who are the legal Beneficiaries of the deceased.

- How should the parcel of land in dispute that is Limuru/Bibirion/2164 be distributed.

The Letters of Administration and even the petition for the Grant are in respect of the deceased who died intestate.

However, in determining matters of succession involving family members it is necessary also to consider the witness of the deceased especially when land has been allocated and parties have settled according to the deceased wishes, this court in exercise of its inherent powers intends to ensure that status quo is maintained as much as possible from the way they have settled.

In this regard, I am satisfied to note that there is no dispute over how the other parcels of land have distributed except the subject plot.

Although the evidence of the petitioners is overwhelmingly convincing , I would wish to be guided by the provisions of the law of Succession and especially Part V on Intestancy. I find Section 38 of the Law of Succession relevant as it provides as follows:

“Where and intestate has left a surviving child or children but no spouse, the net intestate estate

shall, subject to the provision of Section 41 and 2, desolve upon the surviving could, if there be only one, or he equally divided among the surviving children”

This is the relevant section that should guide the distribution of the land in question.

The deceased herein is the father of the 1st petitioner. The protestor, is the widow of the deceased grand son and she sought to claim her husband’s share out of the two acres. Unfortunately, he is not entitled to claim this share of the two acres which in law should be shared equally between the 1st petitioner and (PW2) Teresia Wambui Njoroge who are the children of the deceased. Since Teresia Wambui claims to have sold her interest to the 2nd petitioner and she is not interested in her share Parcel No. Limuru/Bibirioni/2164 should be distributed to the petitioners and the rest of the titles should remain as per the deceased wishes. For the avoidance of doubt the grant of Letters of Administration be confirmed as follows:-

(a) Title No. Limuru/Bibirion/2164 – 2 acres to George Gichia Nyoro and Francis Thogo both as Tenants in common.

(b) Limuru/Bibirion/2167 – 2-3 acres to Elizabeth Nyoro to hold for life and in Trust of

George Gichia Nyoro

Peter Ngigi Nyoro

Francis Thogo Nyoro

Marion Nduta Nyoro

Teresia Njeri Nyoro

Jane Wangechi Nyoro

Rachel Wanjiru Nyoro

(c) Limuru/Bibirion /2165 – 2 acres to Francis Thogo Gichia

(d) Limuru/Bibirion/2166 – 2 acres to George Gichia Nyoro

Each party should hear their own costs of this litigation.

It is so ordered.

Judgment read and Signed on 15th July, 2005.

M. KOOME

JUDGE