



REPUBLIC OF KENYA



**In Re Estate of Grace Nguhi Michobo (Decesead) (Succession Cause
1978 of 2000) [2004] KEHC 2321 (KLR) (Family) (28 May 2004) (Judgment)**

In Re Estate of Grace Nguhi Michobo (Decesead)[2004] eKLR

Neutral citation: [2004] KEHC 2321 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)

FAMILY

SUCCESSION CAUSE 1978 OF 2000

MK KOOME, J

MAY 28, 2004

IN THE MATTER OF THE ESTATE OF GRACE NGUHI MICHOBO (DECEASED)

JUDGMENT

1. Wallace Gichuru Michobo, the Administrator of the estate of Grace Nguhi Michobo filed the Summons seeking for the confirmation of the Grant of Letter of Administration issued on 4th March 1997.
2. According to the supporting affidavit sworn on 16th October 2003 in support of the Summons for confirmation the Administrator proposes the deceased estate should be distributed as follows:
 - Lr No. Karai Gikambura 562
 - Wallace Gichuru Michobo 1.96 acres
 - Samuel Ngugi Michobo 2.00 acres
 - Francis Muiruri Michobo 2.00 acres
 - Titus Gitau Michobo 1.75 acres
 - Estate of Violet Nyamwiga 0.25 acres
 - Lr No. Karai Gikambura 661
 - Wallace Gichuru Michobo (Sole owner)
3. Phylis Njambi Njuguna, a daughter of the deceased filed an affidavit of protest against confirmation of the grant. The affidavit is sworn on 27th October 2003. Another affidavit of protest was filed by Samuel Ngugi Nyamwiga on behalf of the estate of the late Violent Nyamwiga a daughter who died on 6th February 2000.
4. The following person filed a consent to confirmation of grant dated 5th November 2003.



- 1) Samuel Ngugi Michobo
 - 2) Francis Muiruri Michobo
 - 3) Titus Gitau Michobo
5. During the hearing, Mr. Kamonde represent the above persons who signed a consent. Their position in these protest proceedings are almost similar to that of the Administrator of the estate. The only variance is their suggestion that parcel No. 661 be shared equally among all the beneficiaries. These are the sons of the deceased whose argument is that the parcel of land known as Title No. Karai/Kikambura/562 is a family ancestral land that belonged to their late father Amos Michobo who died in 1961. Upon the death of their father the deceased was registered as proprietor and in Trust of the male children in 1965. Mr. Kamonde submitted that since the deceased husband died in 1961 before the commencement of the Law of Succession Cap 160, the applicable law under Section 2(2) of the Law of Succession is the Kikuyu Customary Law which governed the late Amos Michobo whereby married daughters are not entitled to inherit. This parcel of land 562 is not a free property of the deceased. According to the sons of the deceased, upon the demise of their mother this parcel of land being ancestral land reverted back to the family and should therefore be distributed amongst the sons in accordance to the Kikuyu Customary Law. In regard to Parcel No. Karai/Kikambura/661 the three sons position is that the same was purchased by the deceased with her own money and hence should be distributed to all the children under Section 35(5) of the Law of Succession.
6. The protestor's position is contained in their affidavit, the gist of which can be summarized as here below. That the deceased in this case died on 12th April 1987. As at the time of her death she left two principal assets which were registered in her own name to wit TITLE NO. Karai/Gikambura/562 and Karai/Gikambura/661. However in the application for confirmation, the Administrator failed without any lawful cause to allocate the beneficiaries equitable shares and left out one Phylis Njambi Njuguna. Hence Phylis Njambi Njuguna complains of having been unfairly treated and left out as a beneficiary of her mother's estate contrary to the existing Law of Succession.
7. Counsel for the protestor argued that Phylis Njambi is a surviving child of the deceased the issue of whether she is married or not is of no consequence. The Administrator has pointed out that there are two properties belonging to the deceased that are the subject of distribution and Phylis Njambi is not at all considered in the schedule of distribution and hence she has been disinherited. The proposed distribution has not been explained to the court how he has arrived at the proposed distribution. The Administrator has not explained why he allocated himself exclusively one parcel of land and the court should interfere with the proposed distribution which is unfair to phylis.
8. This position was reiterated by counsel for the estate of Violet Nyamwinda Michobo who was a daughter of the deceased. According to the affidavit of Samuel Ngugi Nyamwinda, the proposed distribution is unfair and inequitable as their mother's estate is being allocated only 0.25 acres out of 9 acres comprising of Karai/Gikambura/562 and 661 which should be shared equally among the beneficiaries.
9. The above is the brief summary of the issues and facts arising out of the affidavits filed herein the and submission tendered before me.

The issues for my consideration include the following:

- 1) Who are the beneficiaries entitled to the deceased estate.
- 2) What shares should be allocated to each beneficiary



- 3) Should Phylis Njambi a married daughter of the deceased be entitled to a share of the deceased estate
 - 4) Is parcel No. Karai/Gikambura/562 part of the deceased estate? Should the distribution of this parcel of land be in accordance with the Kikuyu Customary Law:
10. The deceased herein died on 12th August 1987. According to the petition for grant of Letters of Administration in the subordinate court she was survived by the following children:
- Wallance Gichuru Michobo
Samuel Ngugi Michobo
Francis Muiruri Muriu
Peter Gitau Muriu
Vilolent Nyamwinya
11. The grant of Letters of Administration was issued to Wallace Gichuru Michobo on 4th March 1997. Phylis Njambi filed a Summons for Revocation before this court on 13th September 2000 seeking for the revocation of the grant issued in Succession Cause No. 124 of 1992 Kiambu on the grounds inter alia that the same was obtained fraudulently through concealment from court of material facts. By a ruling made on 19th February 2002, Hon. Rawal J. directed that the Administrator should file a fresh application for confirmation of grant with a further affidavit explaining why he failed to include Phylis Njambi. According to the affidavit by the Administrator which he filed pursuant to that ruling, he included the following other beneficiaries:
- a) Phylis Njambi Njuguna (married)
 - b) Ruth Wambui Gathuri (married)
 - c) Bell Wanja (married) deceased.
12. It is quite obvious that the Administrator of the deceased Estate, has no intention of distributing the deceased estate to his married sisters. This position is supported by the deceased 3 other sons who argue that the applicant is a wealthy woman with numerous properties in land and building, and who should therefore not pursue a small share from the deceased estate.
13. Apart from merely making sweeping statements that Phylis is a wealthy woman, there is no evidence produced to show that she owns the properties alleged. It is also not clear whether the property said to belong to Phylis is her own free property acquired through her own industry and effort and or whether it is her husband's.
14. If Phylis were to be excluded merely because she has her own property, the same case would have to apply to all the beneficiaries. Their independent wealth would be investigated and the distribution is done according to their other wealth acquired independently.
15. Since independent wealth of other beneficiaries is not being considered, it would be unfair to subject Phylis to this consideration alone.
16. Having said that, the other connected issue is that Phylis is married. It is also not disclosed whether she has acquired that alleged property with her husband or inherited from her husband. Supposing the husband divorces her, or throws her out of that property if it is in his names? The other concern is also



brought about by Section 35 (1) (b) whereby if she had inherited property from her husband she holds a life interest in the whole residue of the net intestate estate.

17. In my humble opinion, parliament must have made consideration to all the above matters and therefore found it necessary not make any distinction between a male and female child as regards inheritance all children of the deceased are treated equally their gender notwithstanding.
18. Accordingly unless a married daughter has willingly renounced her rights, she cannot merely be left out of her parents estate. I have given due consideration to the provisions of Cap 160 Law of Succession, which commenced on 1st July 1981 and according to Section 2(1) the application of the Act.

“Except as otherwise expressly provided in this Act or any other written law, the provisions of this Act shall constitute the Law of Kenya in respect of, and shall have universal application to, all cases of intestate or testamentary Succession to the estates of deceased persons dying after the commencement of this Act and the Administration of estates of those persons”

19. The estate of the deceased should be administered according to Cap 160. She passed away on 12th April 1981 when the Act was in operation. Is property LR No. Karai/Gikambura/562 a free property of the deceased. According to the copy of the proprietorship section this property was registered in favour of the deceased on 20th September 1965 pursuant to a Succession Cause from her deceased husband Amos Michobo. The deceased was registered as an absolute proprietor. According to the encumbrance section there in no indication that she was holding the property in Trust of her male children according to the Kikuyu Customary Law. The same Title is shown to have been used as a collateral to secure borrowings between 1967 to 1974. I find the argument that this title cannot be distributed under the law of Succession Cap 160 far fetched and without basis.
20. This is an intestate, estate, and the properties for distribution are duly registered under the Registered Land Act. In this regard the deceased estate should be distributed according to Section 35 (5) of the Law of Succession. There is no reason or justification that I have found to exclude Phylis Njambi or to allocate the estate of Violent Nyamwiga a smaller share than the other beneficiaries. The Law of Succession does not provide for any discrimination on the basis of the beneficiaries gender. All the children of the deceased are treated equally unless the child has willingly renounced their interest, they cannot be left out or denied of their inheritance merely because of their marital status. It is most likely that even the male children are married but they are not being discriminated on that basis. If this court were to lock out Phylis Njambi from inheriting her mothers estate on the grounds based on her gender and marital status, this would go against the very grain of equal treatment of all human beings before the law which is a fundamental right under our constitution.
21. It will also be against the principals of equality and elimination of discrimination against women as expanded in the United Nations Convention on the Elimination of all forms of Discrimination Against Women (CEDAW) which Kenya signed and ratified in 1984.
22. Another issue of curiosity to note is that according to the proposed distribution by the Administrator, Violent Nyamwiga's is allocated a portion of parcel No. 562 which indeed is supposed to be ancestral land held in trust for male children. On the other hand they argue that this parcel of land was held in trust for the male children. This is a clear contradiction.
23. In conclusion therefore I find there is justification in interfering with the proposed distribution which should be in accordance with Section 35(5) of the Law of Succession. The deceased two parcels of land should be divided equally among the beneficiaries who have not renounced their interests. The grant of Letter of Administration may be confirmed and the two parcels of land to be shared equally among the deceased beneficiaries who have not renounced their rights.



Each party shall bear their own costs.

It is so ordered.

JUDGMENT READ AND SIGNED ON 28TH MAY 2004.

MARTHA KOOME

JUDGE

