



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
SUCCESSION CAUSE NO. 48 OF 1993

**IN THE MATTER OF THE ESTATE OF NYANJUI THITU KIARIE
(DECEASED)**

JUDGMENT

The dispute in this matter relates to the estate of the late Nyanjui Thitu Kiarie who passed away in 1990 at the age of 80 years.

Upon his death Letters of Administration Intestate in respect of the deceased estate were issued to Irene Njeri Nyanjui who described herself as the widow of the deceased and named the following as the survivors of the deceased:

1. Irene Njeri Nyanjui
2. Lawrence Kimani Nyanjui
3. Kiarie Nyanjui

(All of them adults)

The grant of Letters of Administration was issued on 31st December 1993. On 22nd February 2000, Joe Mungai and Njau Nyanjui filed a Summons seeking to be substituted in place of Irene Njeri Nyanjui who had passed away on 9th July 1998. The said applicants were subsequently issued with the grant of Letters of Administration on 18th June 2003. The circumstances under which they were issued with the grant are not clear as there was already lodged an objection and an affidavit in opposition sworn by Steve Nene and Lawrence Kimani.

However may that as it may when the application came up for hearing the said grant that was issued on 1st June 2003 was revoked by consent and was substituted by another grant issued on 15th October 2003 to four Administrators namely Joel Mungai, Njau Nyanjui, Lawrence Kimani Nyanjui and Margaret Thitu Nyanjui.

Two of the Administrators namely Lawrence Kimani Nyanjui and Margaret Thitu Nyanjui have filed the Summons seeking for the confirmation of the grant. The deceased was survived by 10 children as follows:

- a) Edith Wanjiku Mukono
- b) Njau Nyanjui c) Joseph Mungai Nyanjui

d) William Waihoru Nyanjui

e) Stephen Nene Nyanjui

f) Margaret Thitu Nyanjui

g) Benson Muigai Nyanjui

h) Noah Kiarie Nyanjui

i) Lawrence Kimani Nyanjui

j) Philisca Wambui Nyanjui

Out of these ten beneficiaries eight of them have duly filed their consent supporting the application for confirmation and the proposal made of distribution. That is annexed to the Summons. They have all signed the proposed distribution except Njau Nyanjui and Joel Mungai who have protested and filed their own two separate alternative proposed modes of distribution.

According to the protestors the deceased died intestate and therefore the land at Sigona should be shared equally among all the beneficiaries. However Joel Mungai proposes to remain with Parcel No. Nyathuna/Kabete 560 which he claims to have purchased from the deceased before he died. There is however no sale agreement or documents attached to the affidavit to support this contention.

On the other hand they also propose that Land parcel No. Naivasha/Muchiringiri Block 4/3422 should be registered in the name of Njau Nyanjui Thitu. Hence the two protestors should maintain their parcels of land without sharing with other beneficiaries, and yet they propose to share with the other beneficiaries the Sigona property.

I agree with the protestors that the deceased died intestate and therefore left no valid will. The document that is attached to the application for confirmation titled a will, is not a valid will. The deceased herein died several years ago and there is evidence from the supporting affidavits to support the assertion that he had shown all the beneficiaries where to build their houses and indeed built houses for the elder sons. This is also evidenced from the protestors desire to retain their respective parcels.

I have given due consideration to all the matters that are raised in the affidavits in protest. Pursuant to Section 40 of the Law of Succession Act, the deceased Estate herein should be divided equally among the beneficiaries. The issue therefore is how is this court going to arrive at an equal distribution in the absence of professional valuation of the estate. This court is also cognizant of the fact that professional valuation of this estate might be a very expensive undertaking that may almost deplete the estate to the detriment of the beneficiaries. Although it is difficult to estimate the value of the various properties the proposed distribution that is in support of the application for confirmation and that is supported by (8) eight beneficiaries reflect an attempt by the eight beneficiaries to equalize the beneficiaries. Hence these beneficiaries who have not benefited from Sigona Property their portions are slightly bigger in size as follows:

1. Njau Nyanjui Thitu is allocated land at Naivasha/Muchiringiri Block 4/3422 and 3568 measuring 6 acres
2. Joseph Mungai Nyanjui is allocated Nyathuna Kabuku plot No. 560 measuring 4 acres
3. William Waihoho Nyanjui Gilgil plot No. EC/81 and 82 10 acres

I am satisfied that the proposal by the applicants reflect some level of equality. The other consideration to take into account is that these beneficiaries have settled in their respective parcels and undertook personal development, setting aside or ignoring the proposal that is agreed upon by the majority might

inconvenience the beneficiaries. The protestors complain that their parcel of land might not be of equivalent value to these beneficiaries who were allocated the Sigona plot.

I am satisfied that the protestors who from the beginning tried to exclude the other beneficiaries in the earlier grant are intent on taking undue advantage of the other beneficiaries, prolong these proceedings unnecessarily after all their share of land is distinct from the others.

In view of the above, I would support the proposed schedule of distribution in support of the application for confirmation and that is duly signed by eight beneficiaries. I would however make a slight variation and direct that both protestors be given a sum of Kshs.40,000/= each from the net estate in addition to the properties allocated to them.

These are therefore the final orders of the court and the grant issued on 15th October 2003 be and is hereby confirmed on the above basis. There will be no order as to costs.

It is so ordered.

Judgment read and signed on 30th July 2004.

MARTHA KOOME

JUDGE