



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)
Succession Cause 414 of 1984

IN THE MATTER OF THE ESTATE OF PAUL NENE METHA – DECEASED

RULING

Peter Kimani Nene and Fredrick Kimani filed the Petition for grant of representation for the estate of the deceased on 7th June, 1989.

Rahab Michere Nene thereupon filed Cross-petition and Answer to the petition as well as Objection to making of the grant on 17th August, 1984 and 26th July, 1984 respectively. She filed those pleadings claiming to be one of the widows of the deceased. The main contention by the objector is that the Petition is incompetent as all the beneficiaries of the estate are not disclosed and their consents also have not been obtained before filing.

The cause gathered dust over the period. Eventually, on 20th May, 2008, when the matter came before this court, consent was recorded as to the acceptance of relationship of the parties herein i.e. Rahab was accepted as a co-widow and other children were accepted as beneficiaries of the estate.

The only issue before me, therefore, remained was the distribution of the estate of the deceased.

The parties were directed to file further affidavits to propose such distribution. After that the cause was heard on submissions based on the affidavits on record.

The real issue in contest is property known as plot No.103 Kangangi Market, Kiambu (Block11/50, Kiambu) hereinafter referred to as '***Kiambu property***'.

The parties are at ad idem on the three houses of Priscilla Nungari (now deceased), Grace Nduta Nene and Rahab Michere Nene, their respective children and the assets of the estate.

The Petitioner has contended, relying on a Power of Attorney executed by the deceased on 14th August, 1981 giving her to run the affairs of the Kiambu property, that the said property be given to her wholly. She has also produced receipts of payments regarding occupation and licence (for Bar and Restaurant and Juke Box) on the Kiambu property from 12th July, 1982 upto 1988 (all after the death of the deceased).

I agree, as pointed out by the learned counsel for the Petitioner, that the said special Power of Attorney is not stamped to make it a legal document. Obviously it is also not registered.

On the basis of aforesaid facts averred by her, the objector proposes that:

1. **Kiambaa/Riabai/ 464 be given to house of Grace Nduta Nene (valued at Shs.300,000/-)**
2. **Kiambaa/Ndumberi/314 be given to the house of Priscilla Nungari Nene (valued at Shs.80,000)**
3. **Plot No.1/137, Kiambu be given to Grace Nduta Nene (valued at Shs.40,000)**
4. **Share certificate No.20224 with E.A. Breweries Ltd. (valued at Shs.770,000) to the house of Grace Nduta Nene.**
5. **The Kiambu property to her own house (valued at Shs.300,000)**

As against that the Petitioners have averred that the deceased had made a written wish as to how the Kiambu property would be divided during his life. They have annexed a letter dated 20th January, 1981 by the deceased to his Advocates M/s Wambu and Wambu Advocates stating the Peter Kimani to pay all the outstanding loans on the Kiambu property and Ndumberi/Riabai/464 so that he could fulfill his wishes expressed in his earlier letter of 1980. He also stated that the said Peter Kimani to hold the title for the Kiambu property till the Objector repaid him the loan payments made by him. As the objector refused to pay, he filed a case to recover the claim of Shs.37,000 (**R.M.C.C. No.608/1986** at Resident Magistrate's court Nairobi). A letter dated 24th August, 1988 (Ann.PKN5) shows that the said claim is paid to Peter Kimani.

An affidavit sworn by the Objector along with other widows, on 8th April, 1982 specifically avers the acceptance of the fact that the Kiambu property was charged to Kenya Commercial Bank in the sum of Shs.37,000.

It also avers in paragraph 2 thereof – namely:

“That on 28th February, 1982 all of us were present when the deceased herein made his last will and declared that the above plot NO.103/Kangangi Market, Kiambu shall be inherited by his two wives namely Nungari Nene and Rahab Michere Nene in equal shares and the said plot be registered in the names of the wives after the death of the deceased.”

The petitioners have also mentioned the will of the deceased without giving details thereof. But in view of the production of the aforesaid affidavit, which is not disputed by the Objector, the fate of the Kiambu property was sealed by the last wish of the deceased. The other widow Priscilla Nungari is admittedly deceased and there is consent that her share will be given to her son Fredrick Kimani.

The Petitioners have proposed the distribution of the two properties occupied by their mother Grace Nduta Nene and other assets as under.

1. **Plot No.Ndumberi/Riabai/464 (specified as Kiambaa/Riabai/464 in the affidavit of the objector) be shared amongst Peter Kimani Nene, Grace Nduta Nene and Lucy Nyambura Nene in equal shares and,**
2. **Plot No. 11/37 Kiambu be given to Joseph Ndichu Nene.**
3. **Plot No. Ndumberi/Ndumberi/T.314 (specified as Kiambaa/Ndumberi/314 in the affidavit of the objector) be given to Fredrick Kimani Nene.**
4. **The Petitioners propose the equal sharing of the share certificates amongst the three houses. Fredrick Kimani Nene representing his deceased mother Priscilla.**

It seems that apart from the Kiambu property the beneficiaries have since the demise of the deceased have settled themselves as proposed by both the sides. After about 28 years' lapse, this court is not intending to disturb the position as regards the suit property. The averments made by the petitioners that till the

death of Priscilla, both the widows namely, Priscilla and Rahab (the objector) have been occupying the Kiambu property in equal shares and that after her death Fredrick Kimani has been moved out by the Objector.

It seems from the record of the cause that the said Fredrick Kimani is suffering from mental illness and none of the parties have come forward to give the court the actual position in that respect as of today. I am also not told what is the position of Waranji Nene the daughter of the deceased Priscilla, the senior wife of the deceased.

However, I shall tend to agree that there was the wish of the deceased as agreed by the two widows, I shall not make final determination on the division of the Kiambu property till I get the current position of Fredrick i.e whether he is capable of looking after his affairs and if so, is he married. I shall further like to get more information on the daughter Waranji Nene of the deceased widow Priscilla.

As regards the other assets I direct that the same be distributed as proposed by the Petitioners.

In order to finalize this old matter, I direct that parties to file further affidavits to produce details required by the court within 14 days from the date hereof.

Costs be borne by each party.

Dated and signed at Nairobi this 13th day of October, 2008.

K.H. RAWAL

JUDGE

13.10.08