



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI
FAMILY DIVISION

PROBATE AND ADMINISTRATION

SUCCESSION CAUSE NO. 1066 OF 1992

IN THE MATTER OF THE ESTATE OF ANTHONY MUNGAI
(DECEASED)

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J U D G E M E N T

A grant of letters of administration intestate, to the estate of the late Anthony Mungi Kamuhu, was issued to Ann Wangeri Njoroge, the deceased's estranged wife, now widow and her father Albert Njoroge Ndegwa.

Ann was said to have been legally separated from the deceased by an order of separation dated 15.6.90, which was attached to the affidavit of Joyce Nyawira who filed summons for Revocation or Annulment to the grant obtained by the 2 petitioners. Ann Wangari Njoroge one of the petitioners had started living with the deceased in 1981, and on 15th June, 1988, the two were legally married at the office of the Registrar General, Nairobi. She had two children out of the marriage. Their birth certificates were attached. She claimed the properties of the deceased on the basis that they were acquired during their life together as husband and wife. According to her further evidence in the affidavits, she applied for letters of administration **“in the normal way, and the said letters were gazette in the Kenya official gazette which she annexed to her affidavit”**.

She described the objector as “a mistress or girlfriend” of the deceased, who started living with the deceased in 1991, and had no interest in the deceased's estate.

The objector was of a different view. She described herself as the deceased's second wife who was married after the 1st wife had left. She prayed that the deceased's property be divided equally between her and the petitioner, Ann Wangeri Njoroge.

The objector died on 8th January, 2000 and the court records show that one Ann Nyambura Kimuhu, was substituted in her place. This was done on 29th September, 2000 by an order of consent of all parties.

Ann Nyambura is the mother of the deceased who obtained a Limited Grant of Letters of Administration to the estate of the late Joyce Nyawira. She is therefore the legal representative of Joyce Nyawira.

The parties had filed affidavits but I granted them leave to either call oral evidence or cross examine the dependants of the affidavits filed.

In court during the hearing of the summons for revocation on annulment, Ann Nyambura Kimuhu, substituted as an objector was sworn on oath to answer questions on the contents of her affidavit.

She confirmed that her deceased son had married Joyce Nyawira. That she as the mother of the deceased was the one who went to Joyce's home and paid dowry of Kshs.4,000/=, and later the same year, again she sent a he-goat, as part of the dowry.

The objector testified that his deceased son had 2 children with Joyce Nyawira, one born before she came to the home, but the other one born after Joyce had now been "married" to the deceased. The deceased and Joyce lived in Githurai.

According to the objector, the petitioner Ann Wangare had ran away from the deceased, and had gone back to her parents, but she had 2 children with the deceased. The objector stated further that the petitioner came back upon the death of the deceased and she accepted her back as her daughter in law. The objector then stated categorically "I know both women as my sons wives".

The petitioner Ann Wangare Njoroge, averred in her affidavit that the deceased had 2 plots which were registered in his name. That on one plot were several houses for rental.

Ann left the deceased her husband in October, 1989 after a domestic quarrel. She went back to her parents but according to her she used to meet with the deceased. Ann filed a suit for separation which was decided in her favour on 15th June, 1990.

Ann claimed that the deceased sent for her when he was sick and when he was discharged from hospital they resumed cohabitation in 1992. She denied having found anybody living with the deceased. She denied any knowledge of Joyce Nyawira, and when I questioned her about the evidence adduced in court by the deceased's mother about Joyce, she said,

"I cannot comment on what my mother -in-law said because I was not there. If she went to pay dowry, I do not know about it because I was not there. I know Joyce Nyawira was a tenant".

Ann petitioned for a grant of letters of administration to the deceased's estate, together with her father, a fact which was challenged by the deceased's mother.

During the course of the hearing of these proceedings several photographs taken during the funeral and or burial ceremony of the deceased were produced and referred to. Most of the photographs showed the petitioner Ann and the late Joyce Nyawira together, laying wreaths to the grave or just standing by the coffin. The deceased's mother stated that both Joyce and Ann had daughters by the deceased named after her in accordance with the Kikuyu customs.

From the evidence contained in the various affidavits, and the oral evidence I recorded, I am satisfied that both Ann Wangare Njoroge and Joyce Nyawira were the deceased's wives. Joyce was married during the period of the legal separation between Ann and the deceased. I believe the evidence of the deceased's mother. That evidence is supported by the oral evidence in court and also the evidence by way of the photographs taken during the burial. The two widows should have applied for a grant of letters of administration instead of just one widow, Ann Wangare jointly with her father.

From the evidence I have on record, I find that the grant of letters of administration to the deceased's estate, issued to Ann Wangare Njoroge and Albert Njoroge Ndegwa was issued in error, and I move to revoke it. I direct that a new Grant of letters of administration be issued to Ann Wangare Njoroge jointly with Ann Nyambura Kimuhu, the deceased's mother and the legal representative of the estate of Joyce Nyawira, who was a widow of the deceased but is now dead.

Dated at Nairobi this 27th day of June, 2002.

JOYCE ALUOCH

HIGH COURT JUDGE