



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI
SUCCESSION CAUSE NO. 1064 OF 1994

IN THE MATTER OF THE ESTATE OF ISAAC KIRERU NJUGUNA (DECEASED)

RULING

Kimani Njuguna and Patrick Njuguna, petitioned for a grant of letters of administration to the estate of the late Isaac Kireru Njuguna, deceased.

They are described in form P&A 80 as brother to the deceased and son of the deceased respectively.

The grant was issued, and subsequently confirmed on 24.5.1996. Subsequently, one Hannah Mwihaki Kireru, the deceased's widow and some of her sons and daughters petitioned the court to revoke the grant issued to Kimani Njuguna and Patrick Njuguna.

Hannah's affidavit in support of the application for Revocation was sworn on 17th September 1997 Hannah swore a further affidavit on 6th February 1997. The same was filed in court on 11th February 1998.

Kimani Njuguna, one of the petitioners, filed a replying affidavit on 3rd October 1997. he averred that there was a family meeting at which it was decided that he together with the deceased's eldest son should petition for the grant to the deceased's estate. He annexed to the affidavit, consent of all the beneficiaries, authorizing him and his co-administrators to petition for the grant.

In court during the hearing of the application for Revocation, Mr. Musila for the objectors submitted that the widow did not consent to the mode of distribution, which is what is in issue. He further submitted that the deceased's brother did not involve his co-petitioner the deceased's eldest son, in the distribution of the estate. A further submission was to the effect that there was no evidence to show that the deceased owned property jointly with his brother, Kimani Njuguna.

Mwangi Chege counsel for the administrators submitted that the estate of the deceased was gazetted after the grant had been issued but not yet confirmed and there was no objection raised by anybody. That besides, there were several family meetings which Hannah, the deceased's widow has not disputed.

Hannah's counsel submitted in reply that Hannah's further affidavit already referred to, denied the fact of the deceased's brother having owned property jointly with the deceased.

I have also scrutinized the consent form attached to the replying affidavit of Kimani Njuguna, the deceased's brother and one of the petitioners. The form shows that it was a consent in respect of the proposed administrators.

There is also another handwritten document headed,

“SHARING AGREEMENT BETWEEN EVAN KIMANI

NJUGUNA AND HANNAH MWIHAKI KIRERU”.

It has some calculations of proposed sale of properties, both moveable and immovable, and sharing of proceeds between Evan Kiman Njuguna and Hannah Mwihaki Kireru, but not the other beneficiaries. This was said to be the mode of distribution of the deceased’s estate, yet there is no consent of all the other beneficiaries.

I noted that this “sharing agreement”, did not take into account all the assets of the deceased listed in form P&A 5.

When I considered all this evidence, I came to the conclusion that the mode of distribution of the assets of the deceased in this Succession Cause was flawed!

The deceased survivors and were adults as shown in form P&A 5, never consented to the mode of distribution as required by law. Secondly, not all the properties were “distributed” so to speak. See the list in form P&A 5.

Thirdly, the deceased brother Evan Kimani Njuguna was named as a survivor. This went against the Law in that the Succession Act gives a list of survivors where a deceased had left a spouse and children surviving him or her. See Section 35 of the Succession Act. How does the brother come in?

If, however, the property in question is said to have been jointly owned by the deceased and his brother Evan Kimani Njuguna, where is such evidence of joint ownership to enable the deceased brother to inherit from his estate.

For the reasons, I have considered above, I find that I must proceed under Section 76 of the Succession Act, and Revoke the Grant of Letters of Administration issued to Njuguna Kimani and Patrick Njuguna on 13th December, 1994 and subsequently confirmed, vide Certificate of Confirmation dated 24th May 1996.

It is now upto the deceased’s family to either retain the previous administrators, or agree on who should be the administrator to the deceased’s estate. Whoever the administrators are, they must ensure that all the survivors of the deceased agree to a mode of distribution of the deceased’s estate.

Dated at Nairobi this 12th day of September 2002.

JOYCE ALUOCH

HIGH COURT JUDGE

Ruling delivered today 17th October, 2002 in presence of Counsel for the Petitioner.

JOYCE ALUOCH

JUDGE