



REPUBLIC OF KENYA



KENYA LAW
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Titi (Suing as the Executor of the Estate of Evelyn Wanjiru Wanjohi) v Kinya (Succession Cause E067 of 2021) [2024] KEHC 12687 (KLR) (18 October 2024) (Ruling)

Neutral citation: [2024] KEHC 12687 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
SUCCESSION CAUSE E067 OF 2021**

A MSHILA, J

OCTOBER 18, 2024

**IN THE MATTER OF THE ESTATE OF EVELYN WANJIRU WANJOHI
(DECEASED)**

BETWEEN

MARGARET WANJIRU TITI (SUING AS THE EXECUTOR OF THE ESTATE OF EVELYN WANJIRU WANJOHI) APPLICANT

AND

STEPHEN KIONI KINYA RESPONDENT

RULING

1. Margaret Wanjiru Titi filed the Petition for Probate of Written will or for Proof of Oral will dated 28th June, 2021 as the executor of the estate of the late Evelyn Wanjiru Wanjohi who died on 27th March, 2021.
2. Stephen Kioi Kinya vide his Objection to the making of a Grant dated 27th September, 2022, objected to the making of the grant of representation to the estate of Evelyn Wanjiru Wanjohi who died on 27th March, 2021 as sought in the petition of Margaret Wanjiru Titi filed on 21st July, 2021.
3. The objection is based on the following grounds:-
 - a. That the Objector is one of the beneficiaries of the deceased estate having been bequeathed a part of the deceased estate prior to her death.
 - b. That the Objector is the legal husband of the deceased having married her in the year 2000 and solemnized their marriage in 2003 and lived together till her death.
 - c. That the properties Ruiru/Mugutha Block 1/5592, 5593, 8928 and 8929 form part of the deceased estate, however, they were purchased by the Objector.



- d. That the deceased had purchased Land parcel number Ndalani/Ndalani phase 1/825 on 18th November, 2019 however the same has been listed in her purported last will dated 20th March, 2018.
 - e. That the Petitioner herein is a stranger to the Objector and the deceased family and the purported last will and testament of the Objector's late wife is a forgery and a mere fabrication by the Petitioner.
 - f. That the Objector feels that the Petitioner herein is totally incapable of administering the estate of the deceased person herein and his interest and that of the other beneficiaries may be jeopardized.
4. The application for Objection is supported by the affidavit of Stephen Kioni Kinya. He deposed that he is one of the beneficiaries of the deceased's estate and that the petition for letters of administration herein was filed without his knowledge and/or consent together with that of the other beneficiaries. He deposed that he was married to the deceased and the deceased never mentioned to him that she had left any written will. Together with the deceased, they had purchased several properties and that his daughter-in-law Faith Nyaruai who had been given the house keys prior to the death of the deceased had gained access to the house and had taken away documents belonging to the deceased and the Objector without the consent of the Objector and title numbers Ruiru/Mugutha Block 1/5592, 5593, 8928 and 8929 went missing. He stated that the Petitioner is a stranger to the deceased's estate and the purported last will is a forgery by the Petitioner and Faith Nyaruai as some of the deceased's transactions were not taken into consideration in the purported will. The court was urged to dismiss the Petitioner's application as the alleged will can only be a forgery which issue has been reported at Juja Police Station and investigation are underway.
 5. The Objection was heard by way of viva voce evidence.
 6. Stephen Kioni Kinya a businessman from Ruiru-Juja stated that the deceased was his wife having married her in June 2000. He relied on his application, supporting affidavit and the annexures thereto as his evidence. His wife died on 27/3/2021 and he buried her on his land and that he only learnt of the will on 7/7/2021. He stated that Margaret Tiki was a friend to the deceased as they worked together at Kachororo Primary School in Juja. He indicated that Ruiru/Mugutha Block 1/5592, 5593, 8929 and 8928 were jointly acquired with the deceased during their marriage. He stated that he is doubting the will as some properties were acquired in 2019 after the will had been drawn in 2018 such as Ndalani/Ndalani NO. 825, NO. 9 Tunya plots acquired in 2020 and that Ruiru/Mugutha PLOT NO. 632 allocated to Christopher whereas Faith Nyaruai is listed as the beneficiary of all the property in the will. He reported to the police as he doubted his wife's signature and that Mburu Machua advocate was summoned as well as the Petitioner who never appeared. He stated that Faith passed by the house when the deceased was at the hospital and took away title documents. He contended that his wife could not write a will without informing him.
 7. The Objector filed his submissions where he submitted that he was the legal husband of the deceased and that the deceased had never intimated to him that she had written any will. He submitted that some properties listed in the will include the matrimonial home and properties acquired during the pendency of the marriage which have been bequeathed to Faith Nyaruai their daughter in law. He purchased properties being Ruiru/Mugutha Block 1/5592, 5593, 8928 and 8929 but the same were registered in the name of the deceased. Further, that Ndalani/Ndalani phase 1/825 was purchased in 2019 whereas the will was drawn in 2018 as well as shares acquired from Kalimbula and Gatundu Women Group where each was acquired in 2020. The Objector submits that the will does not recognize him as the primary beneficiary and that the executrix was a mere colleague while the main beneficiary in the will



is a daughter in law and that Chief Kioni Gitonga had been missing for more than 3 years as at the time of executing the will. Lastly the signature in the will was said to be different from the signature used by the deceased as in the annexed samples as such the court was urged to find that there is not valid will and to allow for the proper person to file the petition. In any case the Petitioner was said to have abandoned her Petition.

Issues For Determination

8. Having perused the record, the Objection and the Objector's submissions, this court has only framed one issue for determination which is;
 - a. Whether the will is valid

Analysis And Determination

Whether the will is valid

9. The Objector herein objects to the making of the grant of representation to the deceased's estate herein to Margaret Wanjiru Titi. The objection is based on the grounds that the objector is the legal husband of the deceased, that some properties that belonged to the Objector had been listed as forming part of the estate and that some properties purchased in 2019 had been listed in the will made in 2018. In a nutshell the purported will by the deceased was said to be a forgery by the Petitioner.
10. The Objector contends to have reported that the will was a forged document at Juja Police Station where the DCI Juja commenced investigations which are still ongoing.
11. The applicable law is found at Section 11 of the *Law of Succession Act*, which provides as follows:
 - a. "Written wills.
 - b. No written will shall be valid unless—
the testator has signed or affixed his mark to the will, or it has been signed by some other person in the presence and by the direction of the testator;
the signature or mark of the testator, or the signature of the person signing for him, is so placed that it shall appear that it was intended thereby to give effect to the writing as a will;
the will is attested by two or more competent witnesses, each of whom must have seen the testator sign or affix his mark to the will, or have seen some other person sign the will, in the presence and by the direction of the testator, or have received from the testator a personal acknowledgement of his signature or mark, or of the signature of that other person; and each of the witnesses must sign the will in the presence of the testator, but it shall not be necessary that more than one witness be present at the same time, and no particular form of attestation shall be necessary."
12. Having keenly perused the purported will by the deceased dated 20th March, 2018 vis a vis the issues raised by the Objector, this court is satisfied that indeed the Objector was married to the deceased on 18/01/2003 vide the marriage certificate that was attached. There is also evidence that the title deed for Ndalani/Ndalani phase 1/825 was issued on 18th December, 2019 this is after the purported will was made on 20/3/2018. There is also a sale agreement in support of the intended sale of Ruiru/Mugutha Block 1/8928 on 25th January, 2021.
13. With regard to the allegation by the Objector, that the deceased's signature on the will does not match the signature used by the deceased on her official documents, the Objector claims that the same raised



suspicions, causing him to report the alleged forgery to Juja Police Station where investigations are still ongoing.

14. In *re Estate of Francis Andabwa Nabwangu (Deceased)* (2021) eKLR the court stated that: -

The way to deal with allegation of forgeries of signatures on a will is to have them referred to handwriting experts or document examiners for comparison of the alleged forged signatures with the known signatures of the deceased, as was said and done in *In Re JNM (Deceased)* [2005] eKLR (Koome J). See also *Elizabeth Kamene Ndolo v George Matata Ndolo* [1996] eKLR (Gicheru, Omolo and Tunoi JJA) and *In re Estate of the late Samson Kipketer Chemirmir (Deceased)* [2019] eKLR (Ndung'u J). The opinion of document examiners or handwriting experts is critical.

15. In the case herein, the Objector claims that investigations are still ongoing at the DCI Juja, as such this court finds that it would have been prudent if the outcome of the investigations had been availed. Be that as it may, with the evidence presented by the Objector, this court is satisfied that the Objector raises pertinent issues which raises doubts as to the validity of the will.

16. This court however, notes that the testator had testamentary freedom to bequeath her property anyway she wished as provided for by Section 5(1) of the *Law of Succession Act* which states that;-

“5(1) Subject to the provisions of this Part and Part III, every person who is of sound mind and not a minor may dispose of all or any of his free property by will, and may thereby make any disposition by reference to any secular or religious law that he chooses”

17. The Objector raises issues that the deceased bequeathed most of her properties to the daughter in law Faith Nyaruai whereas he is the main beneficiary being the husband to the deceased and the testator did not adequately provide for him in the will.

18. Nevertheless the fact that a will does not provide for some beneficiaries does not render the said will invalid as the Court is empowered under Section 26 of the *Law of Succession Act* to make reasonable provision for the dependant. Reference is made to the case *In re Estate of Timothy Mwaura Ndichu (Deceased)* (2020) eKLR).

19. Be that as it may, it is noted that the Petitioners Advocates Mburu Machua formally applied to cease acting for her due to the fact that she had failed to provide them with adequate instructions; indeed the Petitioner failed to respond to the Objection as well as failed to be in attendance at any of the court sessions conducted by way of viva voce evidence; therefore she called no witnesses produced no witness statements nor availed any documents to controvert the Objectors evidence to enable this court to give effect to the validity of the will.

20. This Court is therefore satisfied that the Objection has merit and that the will as filed by the Petitioner is found to be invalid.

Findings & Determination

21. For the forgoing reasons this court makes the following findings and determination;

- i. The Objection is found to have merit and it is hereby allowed.
- ii. The written will is found to be invalid; the Petitioners Petition for a Grant of Probate of Written will is hereby dismissed; In the absence of a Cross-Petition the Objector is at liberty to proceed to Petition for a Grant of Letters of Administration of the deceased's estate.



iii. The Petitioner is hereby condemned to bear the costs of this application.

It is so ordered.

DATED, SIGNED AND DELIVERED VIA TEAMS AT KIAMBU THIS 18th DAY OF OCTOBER, 2024.

A. MSHILA

JUDGE

In the presence of;

Mourice – Court Assistant

Kiarie - h/b for Ndungu Mwaura - For Objector

N/A – for Petitioner

