



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

FAMILY DIVISION

SUCCESSION CAUSE NO. 1466 OF 2016

JOYCE WAKONYO MWANGI.....1ST APPLICANT

JAMES WANJAMA KINYANJUI.....2ND APPLICANT

ANNE WAIRIMU KURIA.....3RD APPLICANT

VERSUS

ELIKANAH KINYANJUI MWANGI.....PROTESTOR

RULING

1. The deceased Reynolds Mwangi Kinyanjui died intestate on 16th February 2015. He was survived by a widow Joyce Wakonyo Mwangi (1st applicant) and the following children: Elikanah Kinyanjui Mwangi (protester), Sarah Njambi Waiyaki, Grace Kinyanjui Migui, Timothy Mwangi Kinyanjui, Anne Wairimu Kuria (3rd applicant), James Wanjama Kinyanjui (2nd applicant), Hellen Wambui Kinyanjui and Christine Njambi Mwangi.

2. The estate of the deceased comprised the following properties:-

- (a) LR No. 17/66 (Original No. 17/35/1)
- (b) Kajiado/Ntashart/1757;
- (c) LR No. 209/4931/2;
- (d) Dagoretti/Kangemi/S.87;
- (e) Dagoretti/Kangemi/286;
- (f) LR No. 209/8812;
- (g) Delamare Flat No. 13A-Nairobi;
- (h) Dagoretti/Riruta/1372; and
- (i) Trans Nzoia/Kiptoi/52.

3. On 6th September 2016 the applicants and the protester jointly applied for the grant of letters of administration intestate. The rest of the family supported the petition. A joint grant was issued on 13th July 2018. On 7th November 2019 the applicants applied for the confirmation of the grant. The rest of the family, except the protester, gave consent to the proposed distribution of the estate as contained in the affidavit in support of the application. It was proposed that the parcels be each registered in the joint names of the applicants and protester to hold in trust for themselves and the rest of the family, with each beneficiary having an equal share.

4. The protester opposed the application for confirmation. He was basically opposed to the proposed distribution of the estate. He stated that following the death of the deceased, the family held a meeting on 30th July 2016 which followed an earlier meeting on 8th January 2015 (apparently before the death of the deceased) where a resolution was reached on how the estate was to be shared. It was agreed that LR No. 17/66 be divided into four portions, one portion being LR No. 17/446. It was agreed that he builds on this portion which was next to his mother (1st applicant) who was to occupy LR No. 17/447. Timothy Mungai Kinyanjui and the 2nd applicant were to each occupy LR No. 17/444 and half portion of LR No. 176/445. All beneficiaries were to equally share Kajiado/Ntashart/1757. All the remaining properties were to be held in trust by the administrators for all the beneficiaries. Following the agreement, he bought and brought to LR No. 14/447 building materials in readiness to build his home here. While waiting for the confirmation of the grant to endorse the agreement, he was surprised to learn that the rest of the family had taken their mother to the advocates to sign the consent to support the application. He protested to the advocates without success. When he asked the 1st applicant (their mother) she said she had been made to sign a consent whose particulars she did not understand. He was also surprised that Kajiado/Ntashart/1757 and Delamere Flat No. 13A – Nairobi had not been included in the application for confirmation. The applicants, however, say that this was an inadvertent omission that was not intended. The other complaint was that Hellen Wambui Kinyanjui and Christine Njambi Mwangi live in Dallas in the USA and he could not understand how their consents were procured. I however note, and this is what the applicants indicated, that the two consents were obtained in the USA before a Notary Public. The protester annexed photographs of the building materials he had assembled. Their value is Kshs.1,043,800/=. He also annexed a plan of the alleged subdivision of LR No. 17/66. It is, however, not an official survey plan. He also annexed minutes of the family meeting of 30th July 2016 that were in his handwriting. He said he was the secretary to the meeting.

5. The applicants swore a supplementary affidavit to deny what the protester had deposed to. They stated that the family had held various meetings to discuss how the estate of the deceased would be handled, but deny that any decision was reached on the distribution of the estate. They denied that they agreed to have the protester occupy or build on any part of the LR No. 17/66. They denied that there was any agreement that Timothy Mungai Kinyanjui and James Wanjama Kinyanjui would take any part of the portion as suggested by the protester. Their case was that the two brothers and their mother were all for equal sharing of the estate of the deceased as proposed in the application for confirmation. They further stated that Hellen Wambui Kinyanjui and Christine Njambi Mwangi had each executed their consent in the USA before a Notary Public. The proposal of the family was that the estate be shared equally as proposed.

6. The protester filed a further affidavit to state that the following properties were each too small to be divisible and that each had been rented out and had rental income which could be shared equally:-

- (a) LR No. 209/8812;
- (b) LR No. 209/4931/2;
- (c) Dagoretti/Kangemi/S.87;
- (d) Dagoretti/Kangemi/286;
- (e) Dagoretti/Riruta/1372; and
- (f) Delamere Flat No. 13A-Nairobi;

According to him, only Trans Nzoia/Kiptoi/52 and Kajiado/ Ntashart/1757 could be divided into equal portions, and he had no problem if that was done. In regard to LR No. 17/66, he reiterated what he had stated earlier. He denied that he was opposed to equal sharing of the estate of the deceased, but said he wanted the applicants to be held to their word, the alleged agreement of 20th July 2016.

7. The question to be answered is whether indeed the family of the deceased did on 30th July 2016 agree to distribute the estate of the deceased in the manner indicated by the protester. I pose this question while well aware that it was the duty of the administrators of the estate of the deceased to gather the estate, ascertain the beneficiaries and propose to the court what each beneficiary was to get from the identified property. This is the responsibility indicated by **section 71(i) of the Law of Succession Act (Cap. 160)**. The administrators are the applicants and the protester.

8. Of the nine (9) members of the family of the deceased, only the protester talked of the meeting's resolution to share the estate. The applicants swore a joint affidavit to state that they had several meetings to discuss the estate but that no agreement was arrived at on how the estate would be shared. The minutes relied on by the protester were in his handwriting and were not signed by the rest of the family. The 1st applicant whom he stated that he was to live next to, and who allegedly did not understand the consent she had signed, swore a joint supplementary affidavit to deny these claims. The fact that eight (8) members of the family signed a consent to support the proposed distribution in the summons for confirmation is evidence that they did not agree with the averments by the protester. On balance, I agree with the eight (8) and find that the evidence by the protester was not believable. I find that the protest was without merit and dismiss it.

9. In principle, the protester did agree with the equal sharing of the estate of the deceased. I find that would be the most fair and just way to proceed. However, he went on to state that whereas Trans Nzoia/Kiptoi/52 and Kajiado/Ntashart/1757 were each big enough to be equally subdivided (I note, for instance, that Trans Nzoia/Kiptoi/52 is 17.4 Hectares), the other parcels were commercially rented properties each of which was too small to be divided. This evidence was not countered.

10. I note that the youngest child of the deceased was born in 1980 and the eldest in 1957. The 1st applicant was born in 1940. The court should consider that each member would, as much as possible, want to move on.

11. That being the case, I confirm the grant jointly issued to the applicants and the protester in the following terms:-

(a) Trans Nzoia/Kiptoi/52 and Kajiado/Ntashart/1757 will each be shared equally to Joyce Wakonyo Mwangi, Elizabeth Kinyanjui Mwangi, Sarah Njambi Waiyaki, Grace Kinyanjui Migui, Timothy Mungai Kinyanjui, Anne Wairimu Kuria, James Wanjama Kinyanjui, Hellen Wambui Kinyanjui and Christine Njambi Mwangi;

(b) LR No. 17/66 (Original No. 17/35/1), LR No. 209/4931/2, LR No. 209/8812, Dagoretti/Kangemi/S.87, Dagoretti/Kangemi/ 286, Delamare Flat No. 13A-Nairobi and Dagoretti/Riruta/ 1372, shall each be registered in the joint names of Joyce Wakonyo Mwangi, James Wanjama Kinyanjui, Anne Wairimu Kuria and Elikanah Kinyanjui Mwangi to hold in trust for themselves and for Sarah Njambi Waiyaki, Grace Kinyanjui Migui, Timothy Mungai Kinyanjui, Hellen Wambui Kinyanjui and Christine Njambi Mwangi in equal shares.

12. I make no order as to costs.

DATED and DELIVERED electronically at NAIROBI this 8TH APRIL 2021.

A.O. MUCHELULE

JUDGE