



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KIAMBU

SUCCESSION CAUSE NO. 148 OF 2017

(Formerly Nairobi Succession Cause No. 671 of 2009)

IN THE MATTER OF THE ESTATE OF JAMES NJENGA KINUTHIA (DECEASED)

RULING

1. In a judgment delivered on 30th November, 2018 this court revoked a grant that had been issued to **Nancy Wambui Kamau** and **Bernard Kiruku Kamau**. In the same judgment, the court issued a fresh grant to **Charles Kariuki Njenga** and his sister **Anne Muthoni Njenga** and directed that the two new administrators file summons to confirm the grant in 60 days.

2. Pursuant to this order, a summons to confirm the grant was filed by **Charles Kariuki Njenga** and his sister **Catherine Njoki Njenga**. The summons is supported by their affidavit. Although the fresh grant appears not to have been issued as yet, it is not clear why, despite the express directions of the court, the name of **Anne Muthoni Njenga** was substituted with that of **Catherine Njoki Njenga**. This appears to be an error. For the avoidance of doubt, the grant issued by this court on 30th November, 2018 was to **Charles Kariuki Njenga** and his sister **Anne Muthoni Njenga**, as distinct from the stepsister and minor by a similar name (**AM**), the daughter of **NWK**.

3. The error is not significant and the court will proceed to consider the summons for confirmation which has the support of **Anne Muthoni Wambaa** (Nee **Njenga**), **Charles Kariuki Njenga**, **Catherine Njoki Njenga**, and **Edward Kinuthia Njenga** all of them children of **James Njenga Kinuthia** the deceased herein, and his deceased wife **Grace Wambui** who predeceased the former. The application to confirm the grant met with a protest by **Nancy Wambui Kamau**, mother of the minor **AM** on behalf of **AM**. In its judgment of 30th November, 2018, the court had found that **AM** was the daughter of the deceased but dismissed the claims by her mother to have been married to the deceased.

4. The said **NWK**, now protestor is aggrieved by the mode of distribution contained in the schedule of the summons to confirm the grant. In the said schedule, nine properties are listed namely:

- i. Land parcel LR. NO. Kanyariri/Sigona/153 (the certificate of search reads Sigona/153)-0.5acres.
- ii. Land parcel LR. No. Muguga/Kanyariri/ 517 – 0.89ha.
- iii. Land parcel LR. no. Muguga /Kanyariri/521-0.20ha.
- iv. Land parcel LR. No. Kanyariri/Rukubi/5 (the search certificate on record reads Plot no. 5 Rukubi).
- v. Land Parcel Plot No. Kikuyu Town/25 (search certificate on record reads Kikuyu/Trading Centre/25 – 0.209ha.
- vi. 2 acres at Kitengela.
- vii. Savings/shares in Barclays Bank Ltd A/C No. 00xxxxxx Kikuyu Branch.
- viii. Shares/savings in Kiambu Unity Finance Co-operative Society Ltd A/C No. 2xxx-1xxx-0x and A/C no. 8xx-9xx-0x.
- ix. Motor vehicle registration no. KAW 552L.
- x. Motor vehicle registration no. KAB 022W.

5. It is proposed that the property no. (i) be inherited by **Edward Kinuthia Njenga**; No. (ii) and (iii) by **Charles Kariuki Njenga** and **Catherine Njoki Njenga** in equal shares as tenants in common; no. (iv) by **Charles Kariuki Njenga**; No. (v) by all the children of **Grace Wambui** and

deceased in equal shares as tenants in common; no. (vi) by **AM** (Minor) ; no. (vii) and (viii) to all the children of Grace Wambui and the deceased; no. (ix) by Charles Kariuki Njenga and no. (x) by Catherine Njoki Njenga. The protestor takes issue with this mode of distribution which she considers unjust, biased, and prejudicial to the interest of her minor daughter **AM**.

6. She points out that assets no.(vi) above is non-existent. She contends that the beneficiaries must share the assets equally. Hence, she proposes that assets no. (v) which she claims is a prime commercial plot developed and attracting monthly rental by income in the sum of KShs. 400,000/- be shared equally by all the children of Grace Wambui and the deceased; that asset no.(iii) on which allegedly stands a five bedroomed bungalow be inherited by Charles Kariuki Njenga and Catherine Njoki Njenga as tenants in common; that item (i) and (ii) which are undeveloped be shared equally between Edward Kinuthia Njenga and the minor AM, the latter whose share is to be held in trust for her by the protestor; assets no. (ii) and (iv) also allegedly undeveloped be inherited by the minor AM and be held in trust for her by the protestor; that shares in Barclays bank (assets no. (vii) and asset no. (viii) be shared equally by the children of Grace Wambui and the deceased; and that assets no. (ix) and (x) to be inherited by Charles Kariuki Njenga and Catherine Njoki Njenga, respectively.

7. The court had on 25/09/2019 directed that the protest be canvassed by way of oral arguments based on the parties' respective affidavits. However, on 26/2/2020 the parties agreed to file written submissions. By the next date on which the matter was listed (26/07/2020) only the protestor's advocate had filed submissions. He was directed to serve them on the counsel of the administrators, who were allowed 14 day to file their own submissions and ruling set for 11th February, 2021.

8. It appears that the submissions of the administrators were never filed. It is not clear whether the protestor's advocate complied with the court's directions. The protestors submissions reiterate the contents of her affidavit of protest.

9. The court has considered the summons to confirm the grant, the protest and the record herein. At this point, the beneficiaries of the deceased have been determined to be;

1. Anne Muthoni Njenga (Wambaa) -daughter
2. Edward Kinuthia Njenga – son
3. Charles Kariuki Njenga – son
4. Catherine Njoki Njenga – daughter
5. AM (daughter a minor)

10. Section 38 of the Law of Succession Act provides that:

“Where an intestate has left a surviving child or children but no spouse, the net intestate estate shall subject to the provisions of section 41 and 42, devolve upon the surviving child, if there be only one, or shall be equally divided among the surviving children”.

11. The distribution proposal in the summons for confirmation is evidently faulty as nowhere in the record, including the material earlier filed by Charles Kariuki Njenga, is the 2 acre land parcel in Kitengela listed as an asset in the estate of the deceased. The said asset will therefore not be included in the distribution. On the other hand, there is no evidence to support the protestor's claims that certain assets are developed and more prime than others. In the circumstances, the court will rely on the sizes of the assets, where available, in attempting an equitable distribution of the land parcels. The purpose of distribution is to achieve equity and not necessarily mathematical equality in shares.

12. Equally, there is no evidence to confirm the value of shares or amounts of money held by the deceased in the Barclays Bank and Kiambu Unity Finance Co-operative Society Ltd. The court is also conscious of the strained relationship between the protestor and the children of Grace Wambui and the deceased. The animosity was clear during the earlier proceedings, and may very well spill over to the minor AM. As such, the court would not consider it prudent to tie up the minor's inheritance with those of her elder step-siblings. Ideally, where possible, her share ought to be distinct and separate.

13. In the circumstances, the court sets apart land parcel LR No. Muguga/Kanyariri/521) measuring 0.20ha (asset no.(iii) in the schedule contained in the summons) for the benefit of the minor AM, together with savings/shares in Barclays Bank Limited account no. xxxx Kikuyu branch and the shares/savings in Kiambu Unity Finance Co-operative Society Ltd Accounts no. 2xxx-1xxx-0x and 8xx-9xx-0x(assets no.(vii) and (viii) in the summons' schedule of distribution).

14. The balance of the assets will be shared as follows:

- a. LR. No. Sigona/153 (asset no. (i) in schedule -0.5acres) to Edward Kinuthia Njenga.
- b. LR. No. Muguga/Kanyariri/517 (asset no.(ii) in summons' schedule - 0.89ha.) to Charles Kariuki Njenga and Catherine Njoki Njenga as tenants in common in equal shares.
- c. Plot no Kikuyu Trading Centre/25(asset no.(v) in summons' schedule 0.209ha.) to Anne Muthoni Wambaa (Nee Njenga), Charles Kariuki Njenga, Edward Kinuthia Njenga and Catherine Njoki Njenga as tenants in common in equal shares.
- d. Plot No. 5 Rukubi (asset no. (iv) in summons' schedule) to Charles Kariuki Njenga.

e. Motor vehicle registration no. KAW 552L (asset no. (ix) in the summons' schedule) to Charles Kariuki Njenga.

f. Motor vehicle registration no. KAB 022W (asset no.(x) in the summons' schedule) to Catherine Njoki Njenga.

15. The minor A. M. shares namely land parcel LR No. Muguga/Kanyariri/521 and shares/ savings in Barclays Bank, Kikuyu and Kiambu Unity Finance Cooperative Society Ltd will be held in trust for her. In order to safeguard the minor's interest, the property will be held in trust by the minor's mother Nancy Wambui Kamau, together with the two administrators appointed by this court until A. M. is of age.

16. During the subsistence of the trust, the land parcel Muguga/Kanyariri/521 may not be disposed of under any circumstances. However, some of the proceeds of the two accounts apportioned to **AM** may be withdrawn from time to time, with leave of the court, for the upkeep and education of the minor **AM**. Such leave may be sought by way of application filed by NWK with notice to the administrators herein.

17. The grant issued to Charles Kariuki Njenga and Anne Wambui Njenga (Wambaa) is confirmed in these terms. Parties will bear own costs.

DELIVERED AND SIGNED ELECTRONICALLY ON THIS 13TH DAY OF MAY 2021

C. MEOLI

JUDGE

IN THE PRESENCE OF:

For the Applicants: Mr. Thuo.

For the Protestor and mother of beneficiary AM (minor): Mr Ng'ang'a

Kevin Ndege: Court Assistant