



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

FAMILY DIVISION

SUCCESSION CAUSE NO. 86 OF 2017

IN THE MATTER OF THE ESTATE OF JULIA WAGITHI MWANGI (DECEASED)

ANNE MUGURE.....1ST ADMINISTRATOR/1ST RESPONDENT

PETER GICHUKI MWANGI.....2ND ADMINISTRATOR/2ND RESPONDENT

VERSUS

MICHAEL N.S. MWANGI.....OBJECTOR/ APPLICANT

RULING

1. The deceased Julia Wagithi Mwangi died intestate on 8th April 1987 at Nairobi. Her only estate was Plot No. D-2931 located in Dandora in Nairobi. She had three daughters: -

- (a) Anne Mugure (1st Administrator/1st respondent);
- (b) Leah Wangui Julia alias Leah Wangui Mwangi; and
- (c) Esther Wambere.

The deceased was also survived by grandchildren.

2. Leah Wangui Julia alias Leah Wangui Mwangi and Esther Wambere passed on. Esther Wambere left a widower Michael N.S. Mwangi (the objector/applicant) and four children who include Peter Gichuki Mwangi (2nd administrator/2nd respondent).

3. A grant of letters of administration intestate was issued to the respondents on 3rd May 2017. On 28th November 2018 the 1st respondent filed summons for the confirmation of the grant. With it was an affidavit that proposed how she wanted the estate of the deceased to be shared. She filed a further affidavit on 4th December 2018. The proposal of the 1st respondent was that the property of the estate be sold and the proceeds be shared in accordance with the shares in the affidavit, after considering what had been spent on the estate and the liabilities, including legal charges.

4. On 10th June 2019 the cause was screened by the Deputy Registrar and referred to Court Annexed Mediation. On 6th September 2019 the parties appeared before the Mediator and reached a settlement in the following terms: -

“(1) The property known as Plot No. D – 2931 within Dandora Phase IV be sold on or before the end of January 2020 after valuation at a cost of Kshs.8,000/= to be borne by parties as follows:-

- (a) Anne Mugure – Kshs.4,000/=**
- (b) Nancy Wangeci, Deborah Kagure, Peter Gichuki and Michael Mwangi Kshs.4,000/=**

(2) Water bills and land rates from July 2008 till the property is sold be paid from the proceeds of the sale.

(3) The electricity bill/penalty of Kshs.817,573/= shall be borne by the beneficiaries in the ratio of 5:2 between Anne Mugure of the first part and Nancy Wangeci, Deborah Kagure, Peter Gichuki, Michael Mwangi and Moffat Mwangi of the second part. For avoidance of doubt Anne Mugure has paid Kshs.423,258/= and remains with balance of Kshs.159,851/=. The balance of Kshs.233,644/= shall be paid by Nancy Wangeci, Deborah Kagure, Peter Gichuki, Michael Mwangi and Moffat Mwangi of the second part of as above.

(4) Subject to payment of liabilities, the net estate shall be divided into two equal parts between Ann Mugure of the first part and the family of the beneficiaries of Esther Wambere comprising Nancy Wangeci, Deborah Kagure, Peter Gichuki, Moffat Mwangi and Michael Mwangi as Trustee of the children of the late Julia Wairimu of the second part.

(5) Between now and the time of the sale, Anne Mugure shall continue to collect the rent from the five (5) rooms she has been collecting whilst the family of the late Esther Wambere shall continue to collect rent from the remaining four (4) rooms.

(6) The Kshs.6000 collected from the four rooms of the late Esther Wambere shall be shared as follows:-

(a) Peter shall collect Kshs.3,000/= from the rooms and shall remit to Moffat Mwangi Kshs.1,000/=, to Deborah Kagure Kshs.1,000/= whilst Peter Gichuki to retain Kshs.1,000/=

(b) Michael Mwangi shall collect Kshs.3,000/- from two (2) rooms and shall remit to Nancy Wangui Kshs.1000/= and to retain the balance of Kshs.2,000/= of which Kshs.1,000/= may be used for repairs of their side of the property if it becomes due.

(c) The remittances by Peter Gichuki and Michael Mwangi to the other respective beneficiaries shall be by MPESA.

(7) The Advocates' fees shall be paid from the Estate as a liability from the proceeds of the sale before distribution.

(8) This Mediation Settlement Agreement to be adopted as a judgment of the court in NBI HC P & A No. 86 of 2017.”

5. The Mediation Settlement Agreement was filed before the court on 9th September 2019. On 16th September 2019 it was adopted as an order of the court. It became the judgment of the court.

6. The applicant asked for the setting aside of the Mediation Settlement Agreement and the order of 6th October 2019 saying that the understanding of the parties was that there was the legal issue whether he was entitled to be included as a beneficiary of the estate of the deceased being the widower of the late Esther Wambere who was the daughter of the deceased. The issue was to be determined by the court. His case was that, in that capacity, he was entitled to share the estate equally with the 1st respondent. He made reference to **section 35(1)(b) of the Law of Succession Act (Cap 160)**. He asked that the inheritance to his children with the late Esther Wambere would only arise upon his demise. The response of the 1st respondent was that the applicant had, with his counsel, fully participated in the proceedings leading to the Mediation Settlement Agreement, and that all the issues in the dispute had been settled by the Agreement. According to the 1st respondent, the applicant should not be allowed to depart from the Agreement.

7. This is an easy dispute to resolve. All the parties to the dispute appeared before the Mediator. Each side was there with an advocate. On the side of the applicant was Mr. Ombwayo. On the side of the respondent was Ms. Mutuku. The parties, including the applicant, signed the Mediation Settlement Agreement. So did the advocates. It was clear that the dispute was over the sharing of the deceased's single property, plot No. D-2931 within Dandora Phase IV. It was agreed that the plot be valued and sold, and the proceeds shared as thereunder. The parties and their counsel signed the agreement without any reservations. They agreed that the Agreement would be adopted as the judgment of the court. Counsel surely know that a dispute is usually determined through judgment. There was no allegation of undue influence, coercion or intimidation of the parties in reaching the Mediation Settlement Agreement. The Agreement was not ambiguous. The parties finally agreed on how to settle the dispute that confronted them, and had the advice of the counsel during the exercise. This Mediation Settlement Agreement had created a contractual arrangement and relationship among all the parties who had signed it.

8. Under **section 59B (4) and (5) of the Civil Procedure Act**:-

“(4) An agreement between the parties to a dispute as a result of a process of mediation under this Part shall be recorded in writing and registered with the Court giving the direction under subsection (1), and shall be enforceable as if it were a judgment of that Court.

(5) No appeal shall lie against an agreement referred to in subsection (4).”

9. In conclusion, there is already a judgment of the court that is contained in the Mediation Settlement Agreement that the parties and their counsel signed on 6th September 2019. The applicant cannot be allowed to refile from the Agreement. The consequence is that the application by the applicant has no merits and is dismissed with costs.

DATED AND DELIVERED AT NAIROBI THIS 9TH JUNE 2021.

A.O. MUCHELULE

JUDGE