



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

FAMILY DIVISION

SUCCESSION CAUSE NO. 1506 OF 2013

IN THE MATTER OF THE ESTATE OF JOHN DAVID WAGGEMA (DECEASED)

JANE WANJIKU WAGGEMA.....1ST ADMINISTRATOR

MARY WACERA WAGGEMA.....1ST ADMINISTRATOR

VERSUS

BEATRICE WANGUI WAGGEMA1ST PROTESTOR

MARGARET WAIRIMU MARUGU.....2ND PROTESTOR

RULING

1. The deceased herein, John David Waggema died 33 years ago on 22.10.88 at the age of 104 years at the Kitale District Hospital. The record shows that the deceased was married 3 times. His 1st wife Esther Waruinu Waggema who predeceased him, had 3 children, Grace Njeri Waggema, Phillip Mwangi Waggema, and Jane Wacera Ndisi who are all now deceased. Following the demise of his 2nd second wife Ruth Wangari Waggema who was childless, the deceased married his 3rd wife Eudia Nyambura Waggema who survived him. Together they had 5 children, Stephen Waggema Waggema (deceased), Mary Wacera Waggema, Joseph Macharia Waggema, Jayne Wanjiku Waggema and Ruth Wangare Waggema.

2. A grant of letters of administration was on 3.2.14 issued to the deceased's daughters Jayne Wanjiku Waggema and Mary Wacera Waggema (the Administrators). In their application for the Grant, the Administrators indicated that the estate of the deceased comprised of Title Nos. Loc. 10/Kahuti/748, Loc. 10/Koimbi/301, Eldoret Municipality/Block 2/153/1 and 280 Suwerwa Settlement Scheme.

3. By their Summons dated 19.11.18, the Administrators sought confirmation of the Grant. The Administrators proposed that the 4 properties of the estate be distributed between the 4 surviving children and the estates of the 4 deceased children of the deceased, in equal shares.

4. The proposed mode of distribution of the estate was opposed by Margaret Wairimu Marugu, the widow of Stephen Waggema Waggema, by her affidavit of protest sworn on 19.9.19. Her grounds are that she was not involved in the process of obtaining the Grant. She further averred that Plot No. 280 Suwerwa Settlement Scheme does not form part of the estate of the deceased, having been given to her deceased husband by the deceased by way of gift *inter vivos*. The Protestor further stated that when she filed Kitale Succession Cause No. 160 of 2003 in respect of the estate of her deceased husband, the 1st Administrator objected, claiming that the Protestor is not a legal wife of Stephen Waggema Waggema.

5. After considering the matter, I find that the first issue for determination are whether Plot No. 280 Suwerwa Settlement Scheme forms part of the estate of the deceased. The Protestor claims that Plot No. 280 Suwerwa Settlement Scheme was a gift *inter vivos* to her late husband. The Administrators have however included this property as part of the estate of the deceased. This is not an issue that can be sufficiently proved by affidavit evidence. It can only be determined by the adduction of *viva voce* evidence.

6. The second issue for determination is whether the Protestor is the lawful wife the said Stephen Waggema Waggema, which goes to her *locus standi* to challenge the confirmation of the grant herein. In Kitale Succession Cause No. 160 of 2003 in respect of the state of Stephen Waggema Waggema, the 1st Administrator objected to the issuance of the grant to the Protestor, claiming that she was not a lawful wife of the deceased therein. The outcome of the case which was filed 10 years before the cause herein has not been made known to the Court. It is necessary for the Court to have the full facts to avoid the risk of granting orders that may contradict those of another Court of equal jurisdiction.

7. In view of the foregoing, it is necessary that *viva voce* evidence be adduced and the outcome of Kitale Succession Cause No. 160 of 2003 be placed before the Court in order for the Court to arrive at a just and informed decision. Accordingly, I direct that this matter be mentioned on 21.6.21 for directions as to hearing.

DATED, SIGNED AND DELIVERED IN IN NAIROBI THIS 4TH DAY OF JUNE 2021

M. THANDE

JUDGE

In the presence of: -

..... **for the Administrators**

..... **for the Protestors**

..... **for the Beneficiaries**

..... **Court Assistant**