



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

SUCCESSION CAUSE NUMBER 722 OF 2016

IN THE MATTER OF THE ESTATE OF MUTURI NDIRANGU (DECEASED)

PATRICK GATEBI MUTURI.....PROTESTOR/BENEFICIARY

BONIFACE KURIA NDIRANGU.....PROTESTER/BENEFICIARY

VERSUS

GEOFFREY WAMAI MUTURI

JEMIMAH WANGARI WARUNGE.....RESPONDENTS/ADMINISTRATORS

J U D G M E N T

1. Muturi Ndirangu died on 19th June 2002. Apparently at the time of his death he was survived by:

a) David Ndirangu	Deceased	Son
b) Geoffrey Wamai Muturi	Adult	Son
c) Patrick Gatebi	Adult	Son
d) Lydia Njeri	Adult	Daughter
e) Jemimah Wangari	Adult	Daughter in law

2. Geoffrey and his wife Jemimah filed this cause indicating that the deceased had one asset, **Kijabe/Kijabe Block 1/2949**. They were issued with grant of letters of administration intestate on 15th May 2017. They proceeded to obtain Confirmation of the Grant on 6th October 2017 in which they inherited the property in equal shares.

3. On 17th September 2018 Patrick Gatebi Muturi filed an affidavit of protest indicating that the deceased had other beneficiaries, including Lilian Wanjiru Ndirangu and Boniface Kuria Ndirangu the children of David Ndirangu Muturi (deceased) son of the intestate who were entitled to inherit their father's share. He proposed that the property be shared into four (4) equal shares, among the children of the deceased intestate and with two (2) grandchildren inheriting their father's share.

4. On 29th November 2018, the two (2) administrators Geoffrey and Jemimah made their reply. They deponed that the deceased had an additional property where the whole family resided in **Bahati/Bahati/Block 1/927** where the deceased had also other developments. That Patrick Gatebi Muturi had taken over this property without filing a succession cause. That they had been directed by the deceased to move to the Kijabe land. That he had also bequeathed them three (3) residential rooms at the Bahati property. That Patrick had thrown out the children of his deceased brother David, out of the Bahati property. That because of the value of the Bahati property, it was shared among the other three (3) children of the deceased, while they were given the Kijabe property, that when they moved from Bahati, Patrick had demolished their house and sold that part of the property. That they had no problem with the two (2) properties being shared equally.

5. On 31st May 2019 Boniface Kuria Ndirangu son of David Muturi (deceased) filed his affidavit of protest seeking to secure his father's share of the estate in Kijabe/Kijabe Block 1/2949, Bahati/Bahati Block 1/927 by the sharing equally of the two (2) properties among the beneficiaries of the deceased estate.

6. When the matter came for hearing on 22nd January 2020 the parties each chose to rely on their affidavits.

7. The issues for determination are just two (2);

(i) what forms the deceased's estate

(ii) who are the beneficiaries.

8. On the first issue it is noted that Patrick has not in any way controverted the affidavit evidence of the other beneficiaries that the deceased also had another property Bahati/Bahati Block 1/927 where the deceased and the rest of the family had resided before his demise. He has also not controverted that fact that he took over that property without succession proceedings and has been intermeddling including throwing out the children of his deceased brother. I will therefore take that as an admission that the property indeed exists. And in any event, the deceased died domiciled at Bahati. It is not disputed that that was his home and that is where the family lived during his life time. I draw the conclusion that the deceased's estate is made up of two (2) properties ***Kijabe/Kijabe Block 1/2949, Bahati/Bahati Block 1/927***

9. With regard to the second issue, the deceased was survived by his four (4) children, one of who died leaving children. It is now settled that those children are entitled to inherit their father's share of the estate.

10. For Jemimah being the wife to one of the sons who is living, she cannot have a separate share, independent of that of her husband unless the deceased bequeathed it to her, or her husband was deceased. There was no evidence placed before me that indeed the deceased had bequeathed that asset to Geoffrey and Jemimah specifically.

11. **Section 38** of the **Law of Succession Act** provides for *Where intestate has left a surviving child or children but no spouse;*

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

That is the position in this case. The net estate intestate is to be shared in equal shares subject to **Section 41 and 42**. **Section 41** deals with continuing trust where there are minors for instance. **Section 42** is relevant and as it provides ***for Previous benefits to be brought into account***

Where— (a) an intestate has, during his lifetime or by will, paid, given or settled any property to or for the benefit of a child, grandchild or house; or (b) property has been appointed or awarded to any child or grandchild under the provisions of section 26 or section 35 of this Act, that property shall be taken into account in determining the share of the net intestate estate finally accruing to the child, grandchild or house

12. There is no evidence provided by Geoffrey and Jemimah that the deceased in his lifetime bequeathed them the Kijabe land in exclusion of the other children, or that the property was shared in his lifetime. Neither is there evidence that the deceased had distributed his estate as alleged to any other member of the family. In fact this is demonstrated by the fact that both Geoffrey and Jemimah have indicated their willingness to have the state shred equally among all the beneficiaries. In addition they have not laid any evidence before me that the said Patrick sold any portion of the Bahati property, let alone where they allege they had their home.

13. Having said, I find that the deceased was survived by his four (4) children;

i. *David Ndirangu Muturi* Son (deceased)

ii. *Geoffrey Wamai Muturi* Son

iii. *Patrick Gatebi Muturi* Son

iv. *Lydia Njeri Muturi* Daughter

and grandchildren;

a) *Lilian Wanjiru Ndirangu grandchildren and children to the deceased's*

b) *Boniface Kuria Ndirangu son David Ndirangu Muturi and entitled to inherit their deceased's father's share of inheritance.*

14. The deceased's estate is comprised of Kijabe/Kijabe Block 1/2949, Bahati/Bahati Block 1/927. Each of them be shared equally among the four (4) children. The share for David Ndirangu Muturi be inherited by his children; Lilian Wanjiru Ndirangu & Boniface Kuria Ndirangu in equal shares.

15. The effect of this order is that the grant made to Geoffrey Wamai Muturi and Jemimah Wangari Waruinge is revoked. A fresh grant to issue to ***Geoffrey Wamai Muturi, Boniface Kuria Ndirangu and Patrick Gatebi Muturi.***

16. The form P & A 5 be amended to include Bahati/Bahati/Block 1/927 and the other beneficiaries.

17. Certificate of Confirmation of Grant to issue in the following terms The deceased's estate is comprising of Kijabe/Kijabe Block 1/2949, Bahati/Bahati Block 1/927 be shared equally among the four (4) children. The share for David Ndirangu Muturi (deceased) be inherited by his children; Lilian Wanjiru Ndirangu & Boniface Kuria Ndirangu in equal shares

18. Each party to bear its own costs.

Dated and Signed at Nakuru this 7th day of May, 2020.

Delivered and signed this 7th May 2020.

Mumbua T. Matheka

Judge

In the presence of:- VIA ZOOM

Edna Court Assistant

Protector/beneficiary N/A though informed.

Respondents/Administrators

Mumbua T. Matheka

Judge

7/5/2020