



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIVASHA

(CORAM: R. MWONGO, J)

HIGH COURT SUCCESSION CAUSE NO. 89 OF 2015

(FORMERLY NAKURU SUCC 531/2008)

IN THE MATTER OF THE ESTATE OF JOHANNA KARIUKI KAMAU, (DECEASED)

PHYLLIS WANJIKU CHEGE..... PETITIONER/APPLICANT

-VERSUS-

MWANGI NGANGA.....PETITIONER/ RESPONDENT

RULING

Background

1. Two disparate applications for confirmation of grant are before me, and they serve as objections to each other. There is also another objection, by a grandson of the deceased. A little background to place the matter in perspective is in order.
2. This succession matter was first filed in Nakuru in October, 2008, after the demise of the deceased intestate on 22nd May, 2008. According to the petition filed by the petitioner/applicant, the deceased was survived by his widow (the petitioner), and three sons: Peter Chege Kariuki, Simon Gicheha Wanjiku and Reuben Kariuki Kariuki.
3. On 11th June, 2009, a grant of letters of administration was issued to the petitioner herein, Phyllis, on the basis of the information disclosed in the petition. The petitioner then filed summons for confirmation of grant on 26th August 2009, consented to by the widow and the deceased's three sons. On 31st August, 2009, the grant was objected to by the respondent, Mwangi Nganga, the deceased's brother, by way of summons for revocation.
4. Mwangi Nganga's claim was that the grant had been obtained by fraud and concealment of material facts; that he and his brothers had had a long running dispute over the suit land which was family land acquired through their parents; that they had built and lived thereon since 1963; and that the deceased held the land on trust for them. Documents annexed to the objector's affidavit included proceedings of the then District Land Tribunal of 27th September, 2004, (annexed as "MN1") in which it was indicated on page 4 that the Tribunal's decision was that the entitlements were as follows:

Johana Kariuki Kamau – 8 Acres plus 2.5 acres (Uramati) making 10.5 acres

Chege Nganga – 8 acres

Mwangi Nganga – 8 acres

Macharia Nganga – 8 acres

That decision was not appealed, although a notice of a proposed appeal at the then Provincial Appeals Committee, Nyeri, was exhibited as "MN2" dated 1st July 2008.

5. In paragraph 9 of his affidavit dated 28th August, 2009, deposed in support of his petition for annulment or revocation of grant, Mwangi Nganga asserted his claim to the land in the following terms:

“I have 2 acres that I have built my family house and filled (sic. tilled?) the land since 1963. My brother Chege Nganga and Macharia Nganga have similarly occupied, tilled and brought up their families on the land since 1963 when the land was jointly acquired through our parents from the Settlement Fund Trustees.”

The case he made out was that he was entitled to at least the two acres on which he tilled and had built. According to his affidavit, a similar situation applied to his two siblings.

6. Before a hearing on the application for annulment took place, the file was transferred to Naivasha High Court. The application for revocation was heard by Meoli, J. In a Ruling dated 6th October, 2017, which was not appealed against, the court revoked the grant issued to the petitioner, and ordered that it be re issued in the joint names of the petitioner and the objector (respondent herein) on behalf of the other brothers. For clarity, the only intestate estate or property in issue in this matter is **Nyandarua/South Kinangop/811** (“the Land”) measuring 14 hectares (34.6 acres).

7. In the ruling at paragraphs 28-31, the learned Judge found that the order of the tribunal for subdivision was *ultra vires* the jurisdiction of the Land Disputes Tribunal Act, and null and void. The court also found that since the deceased’s siblings had been and were still living on the land without eviction proceedings having been commenced, and they had filed cautions that remained in situ, it was satisfied that they had a beneficial interest in the said land. The court held that on the basis of such interest, the deceased’s siblings ought to have been notified of the petition for grant of letters of administration.

8. In the end, the learned Judge concluded as follows:

“35) In the circumstances, I am satisfied that the *Objector and his two siblings qualify as persons holding beneficial interest in the suit property and were entitled to participate in these proceedings.* The Petitioner’s calculated move to exclude them from the proceedings by concealing facts material to the Petition in my view vitiates her grant to that extent.

36) I would therefore revoke the grant issued to the Petitioner and order that *a new grant does issue in the name of Petitioner and the Objector.* I hasten to add that the participation of the latter is in a representative capacity for himself and his siblings namely Chege Ng’ang’a and Macharia Ng’ang’a. In light of the age of this dispute, I direct that upon issuance of the fresh grant, the parties will be at liberty to set down for hearing the Summons for confirmation on record and to file affidavits proposing suitable modes of distribution. Each party will bear own costs.”

9. Following the ruling, a grant was issued in the joint names of the petitioner as the deceased’s wife, and the respondent, as the deceased’s brother (respondent) on behalf of his two siblings. The siblings are: Chege Nganga and Macharia Nganga. The decision by Meoli, J, has not been appealed and matters dealt with in it cannot be re litigated in the protests herein or the applications for confirmation.

10. Thereafter, the petitioner and respondent both filed fresh rival summons for confirmation of grant dated respectively, 8th February, 2019 and 12th March, 2019. The modes of distribution proposed by each differs substantially. The difference being that the petitioner has included in her distribution list the names of purported purchasers, who the respondent does not recognise. The mode of distribution proposed by each party is as follows:

Beneficiary Distribution (Acres) as proposed by:

Petitioner Respondent

Phyllis Wanjilku Chege 19.67

Macharia Nganga 2.7

Chege Nganga 2.7

Mwangi Nganga 213.6

Dorcas Njeri Kahora 5

Stephen Githunga Kabirii 2

Stephen Kahome Wamuii 2

Total 34.6 Acres 34.6

11. Two protests have also been filed. The first one is by the petitioner against the summons by the respondent, and the other by one Muiruri Chege, a son of Chege Nganga, the deceased’s brother. Muiruri alleges that the suit land was supposed to be distributed in equal shares of 8.7 acres to Phyllis Chege, Mwangi Nganga, Macharia Nganga and his deceased father Chege Nganga. That would be a total of 34.8 acres, a little more than the total acreage of the intestate suit land.

12. Muiruri also asserts that his father’s share of 8.7 acres should be divided amongst his (Muiruri Chege’s) eleven siblings in a schema where some get 1 acre and others get 0.42 acres. In my view, Muiruri’s claims for distribution to his eleven siblings cannot be properly

determined in this present succession cause relating to the administration of his grandfather Johana Kariuki Nganga's estate, the deceased herein. It is not claimed by Muiruri that either he or any of his siblings are dependants of and were maintained by their deceased grandfather within the meaning of Section 26 of the Law of Succession Act. Therefore, they cannot be treated as such beneficiaries of the deceased's estate. But Muiruri's assertion that his father, Chege Nganga, was a beneficiary of the deceased, is likely since both parties have included him in their summons for confirmation, and it is thus not disputed that he was a son of the deceased.

13. Undoubtedly, the deceased's estate being well determined, it will be distributed to the deceased's proved dependants and beneficiaries. Here, there is no dispute as to who the dependants and beneficiaries are. Thus, each living beneficiary will receive his share, and each deceased beneficiary – such as Chege Nganga – will receive his share through his estate. Such deceased beneficiary's share will then be distributed according to law through a confirmed grant in a succession cause in his name to the children and dependants of that deceased person's estate.

14. In the protest by the petitioner, she included in her distribution list the names of Dorcas Njeri Kahora, Stephen Githunga Kabirii and Stephen Wahome Wamuti, alleged purchasers of parts of the suit property in issue. The applicant/petitioner's protest is to the effect that the deceased was the bonafide registered owner of the suit land; that he gratuitously allotted his siblings two (2) acres each which they have since lived on and that they are not beneficiaries. She asserts further that Mwangi Chege and his siblings were given other family land, and thus the deceased was not holding in trust for them. She also includes as additional beneficiaries two women she says were daughters of the deceased, namely: Jane Wanjiru Wanjiku and Mugure Ndungu who should be entitled as beneficiaries. These were not listed in the petition, and there is neither any evidence concerning their relationship with the deceased, nor have they filed anything to demonstrate their interest or made any claim in the estate

15. In addition, the petitioner avers that the interested parties bought parcels from the suit land from the deceased and have lived on the said land for thirty years, since 1989. She also attached the affidavit of one of the alleged purchasers, Dorcas Njeri Kahora, in support of her summons for confirmation, and says that Dorcas purchased and is holding five acres in trust for three other persons she identifies as Peter Kahora, Paul Kahora and Wilson Kahora. However, no evidence has been adduced of these alleged trusts.

16. Dorcas Njeri, filed an affidavit in support of the petitioner's application for confirmation. She asserts that she bought five acres from the deceased, and indicates that there were other purchasers besides herself. However, she does not mention anything about holding the said five acres in trust for anyone; but asserts that she has been in continuous, uninterrupted possession of the five acres. She does not explain why she despite purchasing the said land, she did not register a transfer of it into her name, nor disclose any efforts at all which she made to transfer the said land to herself.

17. Further, Dorcas exhibited a hand drawn plan of the layout of the suit land which is a replica of that exhibited by the petitioner; she also exhibited a Land Control Board (LCB) Application for Consent dated 24 10 1989, and LCB Consent dated 27 10 1989, which she says evidence her purchase of the 5 acres from the deceased. I have carefully perused those annexures. Both LCB forms refer to land title **Nyandarua/ South Kinangop/260/811**. Apparently this is not the correct or similar title number of the suit property shown in the petition and search, and no explanation is given for this curious discrepancy, although it could be that this was an intended sub division. Further, whilst the attached LCB application is in favour of Dorcas Njeri Kahora, the LCB Consent appears to be in favour of a different person, one Stephen Kabirii. None of the documents alleging purchase are shown to have the signature of the deceased. Accordingly, there is no concrete evidence of purchase of the alleged 5 acres by Dorcas, and no transfer of it was made prior to the deceased's death, nor was any explanation given for the failure to transfer, if at all. To that extent it is part of the deceased's intestate estate.

18. In addition, the purchasers have not on their part filed a protest, but rely on the protest filed by the petitioner/applicant, Phyllis Chege. Even the application by the interested parties seeking to be enjoined, though made by Dorcas and allowed by the court on 5th December, 2017, includes only Dorcas and Stephen Kabiru Githunga who signed the authority to plead. So that, in effect, the only interested parties on record are Dorcas and Stephen Githunga. As in the case of Dorcas, there is no evidence availed to court showing purchase, lease or ownership of the Land or any part of it by the other interested parties. Other than Dorcas, the other interested party has not filed any affidavit setting out his evidence and claim, and this court has no basis to consider mere submissions as if they constituted evidence.

19. As far as the respondent is concerned, neither he (on behalf of his siblings) nor Muiruri, the son of the deceased's brother, recognise the purchasers who appear as interested parties. The respondent asserts that the interested parties have no right to be involved in the administration of the estate, and should file a suit in the appropriate court.

20. I have carefully considered the parties' representations. What the parties seem to have ignored in these proceedings is that the Order given by Meoli, J, in her ruling of 6th October, 2017, was that the parties were required:

“...to set down for hearing the Summons for confirmation on record and to file affidavits proposing suitable modes of distribution”

21. The summons for confirmation on record was that filed by the petitioner on 11th August, 2009, in which the sole beneficiary was indicated as Phyllis Wanjiku Chege. The summons is, clearly, to be considered in light of the determination in the Ruling of Meoli, J, revoking the grant and re issuing it on the ground that the respondent and his siblings were entitled, as follows:

“35) In the circumstances, I am satisfied that the Objector and his two siblings qualify as persons holding beneficial interest in the suit property and were entitled to participate in these proceedings.”

22. Instead of complying with the orders of Meoli, J, each administrator has proceeded to file a fresh, amended, summons for confirmation of grant. So there are now three summons' for confirmation for determination. In the meantime, the two interested parties that were subsequently enjoined by the court (Dorcas Njeri with Stephen Gitunga giving authority to her to plead vide application of 17th December 2017), have not filed any protest. Instead, what they have filed are submissions. The exception is Dorcas Njeri, who deposed an affidavit in

support of the petitioner's amended summons for confirmation, but no protest or objection.

23. As I see it then, what is for determination before me is the summons for confirmation which was on record in 2017, as read with the learned Judge's ruling, which found that the respondent and his siblings have a beneficial interest in the suit property. This notwithstanding, it would not aid the pursuit of substantial justice not to consider the submissions in the latter summonses and protests.

Petitioner's Summons dated 11th August, 2009 on record at date of Ruling and Summons of 8th February 2019

24. The summons for confirmation on record at the time of the ruling in 2017 was that dated 11th August, 2009. That summons seeks distribution of the whole estate of the deceased to the petitioner, Phyllis Wanjiku Chege. This, juxtaposed with the ruling of Meoli J which found that the respondent and his siblings are beneficially entitled, can only be read to mean that the petitioner and the deceased's siblings are all beneficially entitled to a share in the suit property. The ruling has not been appealed.

25. The petitioner's fresh summons dated 8th February, 2019, recants her previous distribution, and amends distribution to include provision to persons who allegedly purchased some of the land in 1989. However, those alleged purchasers have not put in evidence any documents showing purchase such as payment receipts, bank cheques, agreements or documents acknowledging sale and purchase or ownership documents substantively linking them to the said estate land. No document was exhibited with the signature of the deceased acknowledging such sale. In other words, their half hearted efforts to prove their entitlement amount to mere unproved assertions. The alleged assertions of possession without more, cannot be taken as evidence of ownership.

26. The interested parties submitted that they had rights stemming from occupation. They referred to the case of **In re Estate of late Gakubia Githinji Ndegwa (Deceased)[2018]eKLR** where the court stated that the vendor had rights stemming from possession and occupation of the portion occupied which amounted to an overriding interest. In that case, however, the court found that it was not in dispute that the suit land was not family land and the same had been purchased from the vendor; that the Green card reflected that the vendor was the first registered owner and had indeed sold the property to the deceased. These facts distinguish that case from the present one.

27. Further, the interested parties cited **Johnson Muine Ngunza & Another v Michael Gitau Kiarie & 2 Others[2017]eKLR** on the principle that:

“The Law of Succession Act recognises the purchaser's right and in support of these submissions the said law of Succession defines a ‘Purchaser’. Purchaser according to the Act means a purchaser for money or money's worth”

Here, as already noted, there is no evidence of exchange of money or money's worth as between the deceased and the interested parties.

28. The interested parties also cited **In re Estate of Joseph Mutua Munguti (Deceased) [2018] eKLR** where the court took into account that agreements were entered into between the Deceased and the Creditors for the sale of five acres of land. I have perused the authority and the quotation by Odunga, J is as follows:

“48....In the premises I find that there was a valid agreement of sale entered into between the Deceased and the Objector in respect of 7 acres of land to be excised out of Mavoko Town Block 3/2510.

49. As regards the claim by the Creditors, it is also clear from the documents exhibited that there was an agreement entered into between the Deceased and the Creditors for the sale of 5 acres of a land parcel then known as Mavoko Town Block 3/2510 from the deceased for the sum of Kshs.3 million. There is further evidence that the sale agreement bore a thumbprint purporting to be that of the Deceased and the agreement was made before an advocate. Copies of Bank statements have been annexed showing payments made together with copies of the relevant cheques all in the name of the Deceased. There is also a Letter of Consent issued by the Athi River Land Control Board approving the subdivision of Land Parcel No. Mavoko Town Block 3/2510 into three portions as well as a mutation form. There is also a copy of the transfer form duly executed.

50. In my view there is ample evidence on record showing that the Deceased indeed intended to sale the portion of Land Parcel No. Mavoko Town Block 3/2510 to the Objector and the Creditors.”

29. In that case there was clear, ample and convincing evidence of the sale transaction. There was an agreement signed by the deceased; it bore thumbprints; it was made before an advocate, bank statements of the payments were exhibited; duly executed transfer form was exhibited, and so on. The point is that proof of sale from deceased to purchaser must be impregnable. That is not the position in the present case.

30. Given all the above, and before I proceed further, it is important to consider the actual status of the Land on the ground as indicated by a site visit conducted there.

The Site Visit on the Land

31. On 18th September, 2020, the Court visited the suit premises after issuing appropriate directions for that purpose. The object was to enable the parties to point out various aspects of interest or in dispute relating to the Land. The court had also directed that all persons who are properly parties to the suit should be present at the site visit. Covid regulations were strictly complied with during the site visit.

32. The record shows that parties present at the site visit were: Maina Ngaruiya Counsel for the Petitioner/ Administrator Phyllis Chege, who was also present; Gachiengo Gitau Counsel for Co Administrator Mwangi Nganga, who was also present; Ms Kamau Kunini Advocate for

the interested parties – none of whom attended the site visit; and Muiruri Chege, the Protestor. Other beneficiaries and dependants of the deceased and deceased's children were also present.

33. With the agreement of the parties, the walk about or tour of the Land followed the sketch plan filed with the protest of Phyllis Wanjiku Chege. The Court took its own notes after explaining to the parties that the object of the site visit was to see the various aspects of the Land and not to conduct a *viva voce* hearing since parties had already filed written testimony with supporting documents, and submissions had been filed. The walk about was led jointly by the parties' counsel who gave highlights of important aspects they wanted noted as the tour proceeded. The court noted existing physical boundaries and landmarks on the Land, identified existing home steads, and alleged ownership of parcels. Old homesteads were evidenced by structures used as residences, old trees, and established well worn paths or roads.

34. Based on the sketch plan by Phyllis Wanjiku, the Court drew its own sketch of its appreciation of the Land as the tour proceeded and the parties explained the various plots and points of interest. The Court also made its own observations.

35. The Land appears to be split into recognisable plots with boundaries marked by barbed wire on old posts separating each plot, and trees are also grown along most of the various boundaries. It appeared to me that the separate plots had existed as such for a number of years. Generally, I noted as follows in respect of each of the plots:

The plot stated as belonging to Dorcas Njeri Kahora is an open grassland field with no residences or structures on it at all;

The plot stated as belonging to Stephen Githunga Kibirii consists of open farmland with no structures on it;

The plot stated as belonging to Mwangi Nganga has some old well established homesteads on it as well as farmed land;

The plot stated as belonging to Macharia Nganga has old well established homesteads on it as well as farmed land;

The plot stated as belonging to Chege Nganga comprises open farmland with no structures on it;

The plot stated as belonging to Stephen Kahome Wamuii comprises open farmland with a multi use shed built on it;

The large plot stated as belonging to Phyllis Chege comprises open grassland on the lower side; a cluster of trees forming a small forest at the far centre; farmed land on the higher slope; and a series of well established and fenced in homesteads said to belong to her and her children on the upper side near the main road.

36. The following specific aspects of interest were noted at the site visit:

a. All parties agreed that no official or formal demarcations of the Land exist or have ever been made;

b. During the visit to the structure/shed erected on the plot marked as belonging to Stephen Kahome Wamuii, a gentleman known as Peter Njenga Karanja appeared and claimed that the shed was his and that he bought the plot from Stephen Kahome Wamuii about four years ago. Although he stated that he stayed in the shed, on the basis of its appearance, usage, and the absence of established paths around it, I formed the view that the shed was not a regular residence and was perhaps only occupied when farming activities were on going on the plot. Other than the shed on it and trees on its boundaries, the plot comprises mostly open farmland;

c. At the plot marked as belonging to Phyllis Chege, Muiruri Chege identified a place where he said his father – Chege Nganga who died on 11th December, 1985 – was buried. He also showed the spot where his grandfather Nganga Chege was buried. Phyllis Chege conceded that Chege Nganga was buried somewhere around where the Muiruri Chege had identified, but stated that her late husband had allowed Chege Nganga's burial there as there was no other land for the burial of his sibling.

37. In light of the site visit, and taking into consideration the evidence and representations of parties, I am able to make certain conclusions. The only homesteads on the Land are those of Phyllis Chege, Mwangi Nganga and Macharia Nganga. These are two of the siblings of the deceased. The third sibling, Chege Nganga died on 11th December 1985 and was admittedly buried on the Land. That may explain the absence of a homestead on the Land. The existence of the od established homesteads strongly supports the argument that the deceased and his siblings have lived a long time on the Land. The suggestion that they were given two acres out of the goodwill of the deceased is unsupported. 6th

38. In the summons of 8th February, 2019, Phyllis Chege seeks distribution, inter alia, to purchasers Dorcas Njeri 5 acres, Stephen Githunga Kabirii 2 acres and Stephen Kahome Wamuii – 2 acres. This must be read in light of the chamber summons application by the interested parties of 4th December, 2017 and the supporting affidavit thereto of Dorcas Njeri deposed on the same date. There she states:

“4. That my family has lived on the property since 24th October, 1989 for 30 years to date and fear that my property may be in jeopardy with the re issuing of the grant between Mwangi Nganga and his two brothers and Phyllis Wanjiku Chege”

39. Further, Dorcas Njeri Kahora in her affidavit in support of the summons by Phyllis Chege for confirmation of grant deposed on 14th June 2019, she stated as follows:

“6. That my family has lived on the said property since the year 1989 to date and have developed the property with the deceased's family consent and the Co Administrator Mwangi Nganga having knowledge of the said transaction and developments

.....

8. that the deceased had already sub divided his parcel of land and allocated all the purchasers their respective shares”

40. As noted from the site visit, the only homesteads on the Land are those belonging to Phyllis Chege, Mwangi Nganga and Macharia Nganga. There are no developments or residences on the portions said to belong to any of the alleged purchasers. Further, it was clarified and not disputed at the site meeting that no official or formal demarcations or sub divisions of the Land exist. Accordingly, the affidavits of Dorcas Njeri Kahora are incorrect and misleading on those points.

41. The absence of structures on the purchasers’ alleged portions suggests to me that there was uncertainty, hesitation and unwillingness to commit to developing their portions. It is not clear their reasons, but most likely is the fact that they were aware of the disputes regarding the Land and the fact of the caution by Mwangi Nganga, discussed below.

42. According to the Green Card attached to the petition, the title to the Land was issued to the deceased on 3rd August 1994. Two years later, on 15th October, 1996, a caution had been lodged by Mwangi Nganga claiming a beneficiary’s interest according to a search certificate exhibited by him. This put all parties on notice of such claim. The search is in the affidavit of Mwangi Nganga in support of the summons for revocation of the grant dated 28th August 2009. These documents were relied upon by the learned Meoli, J, in Judge, in her ruling earlier mentioned.

Summons for Confirmation filed on 12th March 2019

43. The summons by Mwangi Nganga, who is co administrator and objector, seeks distribution of 7 acres of the Land to Phyllis Chege, Macharia Nganga and Chege Nganga; and 13.6 acres to Mwangi Nganga. This distribution appears to be a carry over from the distribution proposed by the Land Disputes Tribunal. Yet in Meoli J’s ruling in this matter, the learned Judge clearly stated that the tribunal exceeded its jurisdiction in making its proposal. That ruling, as stated, has not been appealed.

44. Based on the evidence available and discussed herein, there is therefore no justification for the distribution proposed by the Objector

45. What is very clear from the evidence, is that disputes concerning the Land have been ongoing for a very long time since it original became held under the auspices of the deceased. This is not in dispute. It is, however, in dispute whether the Land was properly issued with a title in the sole name of the deceased. That dispute is evidenced by the caution already discussed.

46. It is also clear from the site visit that the only old established homesteads on the Land are those of the deceased where Phyllis Chege and her children reside, and Mwangi Nganga and Macharia Nganga, siblings of the deceased. As already noted, Chege Nganga the third sibling died in 1985, which may suggest the reason for there being no homestead there, but he is buried on the Land.

47. The picture that has emerged from the story told by the evidence is therefore that the siblings had settled on the Land; that they were in dispute concerning exactly how much of it each was entitled to; that they buried their brother Chege Nganga and also his father Nganga Chege on the said Land. The location identified as the burial site is close to the home of the deceased, where his widow Phyllis Chege now lives.

48. I must now make my determination on this matter. Given that: the parties have had ample opportunity to reach an agreement as to distribution and have been unable to do so; the age of these proceedings first filed in Nakuru in October, 2008; there is need to bring the disputes to an end. In **Succession Cause No. 155 Of 2015 Naivasha In The Matter Of The Estate Of Mary Wanja Waweru, (Deceased)** this court pointed out that even where parties have not applied for confirmation of a grant:

“Under section 73 of the Act, the court has a mandatory statutory duty and obligation as follows: ‘[it] shall within one year from the date of any grant of representation, give notice to the holder of the grant to apply for confirmation thereof.’

Clearly, the law so favours expediency in the hearing and determination of confirmation proceedings, that the court is statutorily bound and mandatorily directed to require a grant holder to apply for confirmation within one year from the date of the grant. This is an important stance to note in relation to the question whether to delay confirmation proceedings or otherwise.”

49. By parity of reasoning, and in light of the constitutional imperative under Article 159 of the constitution on expedition in the resolution of disputes, I would say that there must be expeditious disposal of the administration of estate proceedings for the good of all parties, relying on the evidence and the law and using just means to achieve just ends.

50. Fortunately, the Court has inherent powers to make a determination on distribution where parties are unable to do so. invoke the inherent powers donated by Rule 73 of the Probate and Administration Rules that empowers this court to do justice. Rule 73 of the Probate & Administration Rules provides:

“Nothing in these Rules shall limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court.”

51. In this case, the dispute concerning whether the Phyllis Chege ought to have been the sole administrator was resolve when the court found that there were other beneficiaries to the estate of the deceased that ought to have been considered. The new dispute, shown herein, is as to how much land each proved beneficiary is entitled to.

52. In **Re Estate of Joseph Mutua Munguti (Deceased)[2018] eKLR** it was stated by the court as follows in respect of cases where the issue for determination is the distribution of the estate of the deceased:

As rightly held by Nyamweya, J in the earlier ruling the issues raised by the Objector and the Creditors herein are properly matters for determination during the distribution of the estate rather than for revocation or annulment of the grant. This position was clearly appreciated by Khamoni, J in Re Estate of Gitau (Deceased) [2002] 2 KLR 430 where he expressed himself as hereunder:

“Distribution of the estate comes during the proceedings to confirm the relevant grant and a party dissatisfied with the distribution may not necessarily be dissatisfied with the grant of letters of administration and vice versa. That being the position, it becomes unreasonable for a person dissatisfied with the distribution of the estate only to proceed to ask for the revocation or annulment of the grant, which has nothing wrong...While section 76 of the Law of Succession Act should therefore be relied upon to revoke or annul a grant it is not proper to use the same section where the objector is challenging the distribution only. There are relevant provisions to be used for that purpose and section 76 is not one of them.”

53. I adopt the reasoning and stance taken by the courts as contained in the above case of the **Estate of Joseph Mutua Munguti**. Accordingly, I will now conclude my determination.

Disposition

54. Applying the court’s inherent power under Rule 73, I determine that the Land comprising 14 hectares (34.5 acres) shall be distributed under a confirmed grant in the names of the two administrators as follows:

- a. 1. One (1) Acre near the road where the present burial site is located shall be set aside as a burial site for the members of the families of the deceased and his siblings.
2. The said one (1) acre of land shall be held in trust in the joint names of the administrators.
3. The parties are at liberty to alter in future the manner in which the said land is held including to distribute it between the various families of the deceased and his siblings.
- b. Seven (7) acres each shall be partitioned and distributed in the names of and for the siblings of the deceased, namely in favour of Mwangi Nganga, Macharia Nganga, and the late Chege Nganga;
- c. The remaining Twenty two point five (22.5) acres less road reserves shall be distributed in the name of Phyllis Wanjiku Chege

55. I make no order is made as to costs herein, as these are administration proceedings to identify the proper beneficiaries and for distribution purposes. Further it is noted that the distribution ordered herein will involve the parties in substantial costs and financial outlay in surveying and sub division administration matters.

Administrative directions

56. Due to the current inhibitions on movement nationally, and in keeping with social distancing requirements decreed by the state due to the Corona virus pandemic, this Judgment has been rendered through Zoom/Teams video/tele conference with the consent of the parties noted hereunder, who were also able to participate in the conference. Accordingly, a signed copy of this judgment shall be scanned and availed to the parties and relevant authorities as evidence of the delivery thereof, with the High Court seal duly affixed thereon by the Deputy Registrar/Executive Officer, Naivasha.

57. A printout of the parties’ written consent to the delivery of this judgment shall be retained as part of the record of the Court.

58. Orders accordingly

Dated at Naivasha this 8th day of October, 2020

RICHARD MWONGO

JUDGE

Delivered in the presence of:

1. Gachiengo for Co Administrator Mwangi Nganga
2. Muiruri Chege present in person

3. Ms Kamau holding brief for Kunini for Co Administrator and Interested Party

4. Ms Kamau holding brief for Maina Ngaruiya for the Petitioner

Court Clerk: Quinter Ogutu