



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

SUCCESSION CAUSE 103 OF 1992

IN THE MATTER OF THE ESTATE OF NJUNGEI KAMUNYU (DECEASED)

JANET MURUGI NJUNGEI.....1ST PETITIONER

PETER ROMANUS KAMUNYU.....2ND PETITIONER

VERSUS

ELIZABETH WANGARI NGUGI.....RESPONDENT

RULING

1. Vide an application filed by way of summons dated 9th February, 2018 under certificate of urgency and brought under **sections 45, 47, 74 and 81** of the **Law of Succession** and **Rules 43 and 73** of the **Probate and Administration Rules**, the Petitioners sought for orders that:

1. ...

2. ...

3. the Grant of Letters of Administration confirmed on 26th February, 1993 be rectified as per the attached schedule of distribution and the same to read Land Reference Number 10821/87 instead of Land Reference 10821/15 (original number).

4. whereas one of the Administrators Elizabeth Wairimu Njungei passed away on 17th October, 2014, the surviving administrators be allowed to proceed with distribution of the deceased's estate.

5. the beneficiaries who have passed on since the Grant herein was issues be replaced by their dependants as indicated in the supporting affidavit.

6. ...

2. Annexed to the application is a distribution schedule over Land Reference Number 10821/87 originally Land Reference Number 10821/15.

3. The application is supported by an affidavit sworn jointly by the Petitioners on 9th February, 2018 in which they depose that a Grant in relation to the deceased's estate was issued to them alongside Elizabeth Wairimu Njungei who is now deceased. That Elizabeth passed on before the distribution could be effected. Annexed to the affidavit is Elizabeth's death certificate of number 0268119 which shows that Elizabeth died on 17th October, 2014.

4. A reading of **section 81** of the **Law of Succession Act** reveals that upon the death of one or more of several administrators to whom a grant of representation has been made, all the powers and duties of the administrators shall vest in the survivors or survivor of them, in this case Janet Murugi Njungei and Peter Romanus Kamunyu, the Petitioner's herein.

5. The Petitioners state that at the time of confirmation of the grant, the sole asset of the estate being Land Reference Number 10821/15 Juja, was vested in the administrators to hold and later transfer to the beneficiaries of their late father, the deceased herein, in equal shares.

6. On 1st October, 2015 the Petitioners, in their capacity as administrators, instructed M/s Geosite systems to carry out a survey and subdivide the said Land Reference Number 10821/15 into sixteen equal portions so that each of the beneficiaries could hold an equal share.

7. Following a series of family meetings on how to effect the subdivision, the beneficiaries agreed that each one of them would get a portion but do so, in so far as possible, without displacing any one of them from the portions on which they had put up their homesteads. The land is ancestral land on which various beneficiaries have lived over a long period of time and developed their respective homesteads. The remaining portions were to be balloted for by those whose homesteads did not take up the whole of their entitlement. The surveyor consequently prepared a map indicating the share of each beneficiary. The map is annexed to the application.
8. The Petitioners averred that Elizabeth Wangari Ngugi, cited as the Respondent herein, has encroached on and commenced construction on the portion allocated to Magdalena Njeri Gicheha, the widow of the deceased's son John Gicheha Njungei. There is a suit filed by Elizabeth in Environment and Land Case Number 772 of 2007 at Thika Law Courts alleging ownership of the said portion. The Petitioners urged that moving Magdalena from her portion would upset the whole subdivision as they had unanimously adopted the principle of non-displacement in determining the portion to vest in each beneficiary.
9. The Petitioners annexed the death certificates of the beneficiaries who have since died and asked the court to substitute them with their dependants in the distribution as follows:
- I. John Gicheha Njungei to be substituted by his widow Magdalena Njeri Gicheha.
 - II. George Ngugi Njungei to be substituted by his widow Elizabeth Wangari Ngugi.
 - III. Mary Njoki Ndungu to be substituted by her children.
 - IV. Nancy Njambi Njungei to be substituted by her children.
10. The Petitioners urged the court to recognize the shares in the distribution in line with the map prepared by M/s Geosite Systems. The map is annexed to the application.
11. The Grant of Representation to the estate of the deceased herein was confirmed to Elizabeth Wairimu Njungei, Janet Murugi Njungei and Peter Romanus Njungei on 26th February, 1993. According to the schedule in the Certificate of Confirmation of Grant, there is only one asset available for distribution being LR. 10821/15.
12. On 2nd October, 2018 during the hearing of this application, the court directed the Hon. Deputy Registrar, Family Division to visit the suit property and compile a report on the layout of the property and the status quo on the ground to establish the position occupied by each beneficiary. The Hon. Deputy Registrar, Family Division did conduct a site visit of the property and he prepared a report dated 19th October, 2018 which is on the record.
13. According to the Deputy Registrar's report, the property is a diagonal strip of land measuring about 5.882 hectares located in Kiambu County, Juja Sub County Komo location Nyachaba sub-location about 3 to 5 Kms off the Thika-Nairobi super highway. The entire parcel of land measures about 19.5 meters or thereabout in width and about 2337.64 meters in length and is sub-divided into 27 plots.
14. The property has sequentially numbered beacons demarcating each plot. The Deputy Registrar attached a sketch diagram indicating the occupants of each of the plots. The report also lists which beneficiary occupies each plot shown on the sketch diagram and the measurements thereof.
15. The Protestor filed an affidavit dated 3rd May, 2018 in protest to the summons for confirmation and rectification, in which she deposed that during a family meeting held on 29th September, 1994, it was agreed that Plot No. 17 should be shared amongst five (5) beneficiaries, one of whom is her late husband George Ngugi Njungei. She accused the Petitioners of attempting to impose their own mode of distribution to which she is opposed, and Magdalena Njeri of attempting to displace her from her portion of Plot No. 17. She did not however take issue with how the rest of the property has been sub-divided. None of the other four beneficiaries or their representatives have come forward to state that Plot No. 17 was to be shared amongst the five (5) of them as alleged by the Respondent.
16. According to the Deputy Registrar's report, the Respondent occupies Plot No. 20, a cultivated plot measuring 0.151 hectares with a homestead and a perimeter wall. The pictures of the plot are annexed to the report and labelled as I1, I2 and I3. The Respondent also cultivates an unalienated portion of the property across the river opposite Plot 27. The Respondent has constructed a stone structure, which is incomplete, on Plot No. 17 which the Petitioner's claim was assigned to John Gicheha Njungei (deceased). Plot 17 measures 0.083 hectares, faces the road opposite Plot 16 and has a grave at the rear.
17. The report further shows that Magdalena Njeri Gicheha, widow of John Gicheha Njungei (deceased), is assigned Plot 22 which is a cultivated plot measuring 0.068 hectares. According to the report, Plot No. 17, was assigned to John Gicheha. It is on this plot that the Respondent has put up a stone structure.
18. While the report indicates that John Gicheha was also assigned Plot No. 27, a cultivated plot measuring 0.729 hectares, together with Janet Murugu, the deceased's 2nd widow, the map prepared by M/s Geosite systems surveys gives a different story. According to the map, Plot No. 27 is assigned to Trustees. The distribution schedule attached to the Summons for Rectification of Grant also fails to include Plot No. 27 together with Plot No. 10 as those shared among the beneficiaries.
19. Both the Report and the Map indicate that Plot No. 10 which has a quarry and a swamp, and measures 0.462 hectares is held by Patrick Kamunyu Njungei and John Gicheha Njungei now deceased, in trust for the whole family. It is therefore right to conclude that Plot No. 27 which was assigned to both John Gicheha (deceased) and Janet Murugu, widow to the deceased herein, is to be held in trust for the entire family.

20. I note that from both the Report and the map prepared by M/s Geosite systems it is clear that each of the portions assigned to each beneficiary measures approximately 0.151 hectares. This is in line with the principle of equality applied when distributing an intestate estate. In the proposed distribution, the beneficiaries who had already put up their homes were assigned the portions on which their homesteads stand. In cases where the said portions do not add up to their entitlement, they have been assigned a separate additional plot.

21. The Respondent herein is assigned Plot No. 20 which measures approximately 0.151 hectares. She has her homestead on the said Plot. Magdalena on the other hand is assigned Plot No. 17 measuring 0.083 hectares and Plot No. 22 measuring 0.068 hectares which altogether adds up to 0.151 hectares. From the pleadings, Magdalena has lived on Plot 17 for more than two (2) decades.

22. Considering that the Respondent has an additional portion which she cultivates, it is evident that all she is seeking is a larger entitlement in the deceased's estate than of the other beneficiaries. There is however no basis for her claims which are also contrary to the provisions of the **Law of Succession Act** which envisages equality in distribution of intestate estates.

23. There is therefore no doubt that the Respondent's claim is merely an attempt at displacing Magdalena whose portion the Respondent considers prime land. Her claim is fashioned only to put her interests above those of the other beneficiaries and upset the whole subdivision. This is bearing in mind that Geosite surveys mapped out Plot No. 10 and Plot No. 27 as land held in trust for the entire family.

24. Accordingly, in the wider interest of justice and equity, I allow the summons for confirmation and rectification of grant dated 9th February, 2018 and order as follows:

- a. The Grant of Letters of Administration of the estate of Njungei Kamunyu (deceased) is hereby rectified in accordance with the schedule of Distribution annexed to the summons for confirmation and rectification of grant dated 9th February, 2018.
- b. The sole asset of the deceased's estate originally Land Reference Number 10821/15 is rectified to read Land Reference Number 10821/87.
- c. The surviving administrators being Janet Murugi Njungei and Peter Romanus Kamunyu are hereby allowed to proceed with the distribution of the deceased's estate.
- d. The shares of the deceased beneficiaries shall devolve to their dependants as listed under paragraph 18 of the affidavit sworn on 9th February, 2018 in support of the summons.
- e. Plot No. 10 shall be held by Patrick Kamunyu Njungei, a son to the deceased in trust for the whole family.
- f. Plot No. 27 shall be held by Janet Murugu Njungei, the deceased's second widow in trust for the whole family.
- g. Each party shall bear their own costs.

SIGNED DATED and DELIVERED in open court this 19th day of February, 2019.

.....

L. A. ACHODE

HIGH COURT JUDGE

In the presence ofAdvocate for the Petitioners.

In the presence ofRespondent in Person.