



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MURANG'A

SUCCESSION CAUSE NO. 113 OF 2013

[FORMERLY EMBU HIGH COURT P&A CAUSE 195 OF 2011]

RE ESTATE OF HEBRON MAINA WAIREGI *alias* MAINA WAIREGI (DECEASED)

LYDIA WAIRIMU CHEGE.....PETITIONER

VERSUS

JOSEPH GABRIEL MWANGI HEBRON.....PROTESTOR

JUDGMENT

1. Hebron Maina Wairegi (hereafter *the deceased*) died *intestate* on 7th November 2001. There is a dispute over the *administration* and *distribution* of his free estate.
2. The petitioner is a *daughter in law* of the deceased. She was substituted in place of her late husband, Stephen Chege Maina. The latter was a *son* of the deceased. The impugned grant was issued to him on 25th June 2012 at the High Court in Embu. The cause was subsequently transferred to Murang'a High Court on 12th February 2013.
3. The protestor is the eldest son of the deceased. He testified that the family of the deceased convened a meeting on 10th May 2014. He was appointed, by a *majority vote*, to be the *sole* administrator. He was thus surprised to learn that Stephen Chege Maina filed the original cause at Embu behind their backs.
4. The objector filed *affidavits of protest* sworn on 17th June 2016 and 19th February 2018. The petitioner relied on three affidavits dated 12th April 2013, 18th August 2014 and 14th September 2016.
5. I recorded *viva voce* evidence. The protestor relied largely on the two *affidavits of protest*. He called one witness, Samuel Kamau, who confirmed that indeed the family met; and, nominated the protestor to be the sole administrator. That fact was conceded by the petitioner in court.
6. I thus readily find that although Stephen Chege Maina was entitled to apply for a grant, he acted as a lone ranger against the wishes of the majority of his siblings. It was a selfish act that has caused unnecessary friction and delays in distributing the estate.
7. Stephen Chege Maina died on 23rd August 2018. It would be unjust for his widow, the petitioner, to remain as the administrator.
8. I *revoke* the grant issued on 25th June 2012 by the High Court in Embu. Instead, I appoint the protestor, Joseph Gabriel Mwangi Hebron, to be the *sole administrator* of the deceased's estate.
9. I will now turn to the distribution of the estate. There is *no* dispute that the deceased was survived by *ten* children-
 - (a) Joseph Mwangi Hebron (son)
 - (b) Stephen Chege Maina (son, now deceased) represented by his widow, *Lydia Wairimu Chege*.
 - (c) Peter Mucheke Hebron (son)
 - (d) Ephantus Kamau Hebron (son)

(e) Obed Kahuru Maina (son, now deceased) represented by his widow, *Mary Wairimu Kahuru*.

(f) Josephine Njoki Maina (daughter)

(g) Jane Wanjiku Hebron (daughter)

(h) Winnie Wanjiru Hebron (daughter)

(i) Mary Waruinu Hebron (daughter)

(j) Margaret Waithira Hebron (daughter, now deceased) represented by her son *Macharia Waithira Hebron*.

10. The assets are also known: They comprise three parcels of land-

(i) Loc 12/Sub Loc 5/ 776

(ii) Nthawa/Riandu/2422

(iii) Nthawa/Riandu/2423

11. The disputants *agree* that all the children (or their successors) are entitled to a share of the estate. The disagreement is largely on the format. The protestor proposes to consolidate the two parcels in Embu; and, to divide the three properties into *six equal units*. He then groups the dependents into *six sets*. He testified that those were the wishes of his father.

12. Under the protestor's scheme, each of the five sons would *twine* with a sister. The sixth portion would go to the *orphans* of Margaret Waithira Hebron.

13. The petitioner's rebuttal is that granting the orphans a share would be unjust. It would result in an *extra* portion for their mother, Margaret Waithira Hebron. She proposed that each of the children of the deceased (or their successors) get an *equal* share of the estate.

14. The deceased died *intestate* on 7th November 2001. His estate is undoubtedly governed by the **Law of Succession Act**.

15. To *twine* the sons or daughters into *five* titles, as proposed by the protestor, will result in problematic and untidy *joint proprietorships*. I also find that there is *no* evidential or legal basis for an *extra* share to the orphans of Margaret Waithira Hebron.

16. Sections 26 and 29 of the Act do *not* discriminate between *sons* and *daughters*; or, even *married* daughters. See **Re Estate of Simeon Kuria Kamau** High Court, Eldoret Succession Cause 218 of 1997 [2014] eKLR.

17. Fortunately in this case, the disputants *agree* that *all* the sons and daughters of the deceased are entitled to an *equal* share.

18. The estate of the deceased shall thus be divided *equally* between the children of deceased or their successors as particularized in paragraph 8 of this judgment.

19. For the avoidance of doubt the portion for *Stephen Chege Maina* (son, now deceased) shall devolve to his widow *Lydia Wairimu Chege*. The part due to Obed Kahuru Maina (son, now deceased) shall devolve to his widow *Mary Wairimu Kahuru*. The part of the estate due to Margaret Waithira Hebron (daughter, also deceased) shall devolve to her *son* Macharia Waithira Hebron; and, to the children of her *late daughter*, Jane Nyambura Waithira.

20. In order to facilitate the subdivision, the two adjacent properties in Embu, Nthawa/Riandu/2422 and Nthawa/Riandu/2423 shall be *consolidated* into one title.

21. The final orders shall be as follows-

i) That the grant issued on 25th June 2012 by the High Court in Embu is hereby *revoked*.

ii) That the protestor, *Joseph Gabriel Mwangi Hebron*, is hereby appointed as the *sole administrator* of the estate of the deceased.

iii) That the estate of the deceased shall be divided *equally* between the children of deceased or their successors as particularized in paragraph 9 of this judgment.

iv) For the avoidance of doubt the portion for *Stephen Chege Maina* (son, now deceased) shall devolve to his widow *Lydia Wairimu Chege*. The part due to Obed Kahuru Maina (son, now deceased) shall devolve to his widow *Mary Wairimu Kahuru*. The part of the estate due to Margaret Waithira Hebron (daughter, also deceased) shall devolve to her *son* Macharia Waithira Hebron; and, to the children of her *late daughter*, Jane Nyambura Waithira.

v) In order to facilitate the distribution, the two adjacent properties in Embu known as Nthawa/Riandu/2422 and

Nthawa/Riandu/2423 shall be consolidated into one title.

22. The grant shall be *confirmed* in terms of this judgment. In the interests of justice, there shall be *no* order on costs.

It is so ordered.

DATED, SIGNED and DELIVERED at MURANG'A this 12th day of March 2019.

KANYI KIMONDO

JUDGE

Judgment read in open court in the presence of:

Mr. Mbuthia for the petitioner instructed by J. N. Mbuthia & Company Advocates.

Protestor (in person)

Ms. Dorcas and Ms. Elizabeth, Court Clerks.