



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NYERI

SUCCESSION CAUSE NO.414 OF 2012

IN THE MATTER OF THE ESTATE OF ELIZABETH WANGECHI NGUGI (DCD)

PETER NDIRANGU NGUGI.....PETITIONER/APPLICANT

VERSUS

SUSAN WAITHERA NGUGI.....1ST RESPONDENT/PROTESTOR

JACKSON NDUNGU NGUGI.....2ND RESPONDENT/PROTESTOR

MARY MUTHONI MWAL.....3RD RESPONDENT/PROTESTOR

MARY WAMBUI NGUGI.....5TH RESPONDENT/PROTESTOR

GLADYS W. MWANGI.....6TH RESPONDENT/PROTESTOR

JUDGMENT

The applicant and the protestors are the surviving children of the late Elizabeth Wangechi Ngugi (the deceased) who died intestate on 8th March 2011. According to the affidavit in support of the Petition for grant of letters of administration intestate sworn by the applicant, other children are John Kabuthu Ngugi, Naftaly Wachira Ngugi and a daughter-in-law, Esther Njeri Maina. In that affidavit, the only asset listed as comprising the deceased's net intestate estate is land title number Thegenge/Gathuti/710 which measures approximately 1.48 hectares.

The grant was made to the applicant on 11 April, 2013 after which he initiated the process of distribution of the deceased's estate through a summons for confirmation of grant dated 26 February, 2014. In that summons, the applicant listed all the deceased's survivors as indicated in the affidavit in support of the petition but proposed to have the estate shared equally amongst the deceased's four sons and her daughter-in-law to the exclusion of all his sisters.

The applicant's sisters felt that they would, in effect, be disinherited if the estate is distributed as proposed by the applicant. For this reason, they filed a joint affidavit of protest, protesting against the proposed scheme of distribution. They were joined in this bid by one of their brothers who is named as the 2nd respondent.

When the protest came up for hearing, the applicant conceded that apart from the deceased's survivors whom he listed in his affidavits in support of the petition and the summons for confirmation of grant, there were two other children who are deceased. One of them was the deceased's eldest son named as Amos Wanjau but who is survived by his wife Esther Njeri Wanjau and nine children; he proposed to have Amos' widow inherit the share that would have been given to his deceased husband.

In his evidence, the applicant did not have any particular reason why he would not want to share the deceased's estate with his sisters save to say that they were married.

The protestors' case is simple; that the deceased's estate should be shared out equally amongst all her children. Like the applicant, they acknowledged Esther Njeri Wanjau to be their sister-in-law, having survived her husband, Amos Wanjau, and for that reason, they would not have any problem if she got what would have been his share of the deceased's estate.

Having died intestate without a spouse the law on distribution of the deceased's estate would be **section 38** of the **Law of Succession Act, cap. 160** which provides as follows:

38. 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 be equally divided among the surviving children.

Sections 41 and 42 of the Act to which reference has been made in this section would be of no consequence in the present circumstances because section 41 involves heirs who are below eighteen years and whose share of the estate would, by reason of their age, be held in trust for their benefit until such time that they are adults. Of all the deceased's children, the youngest of them was 50 years old as at 7 May, 2012 when the petition for grant of letters of administration intestate was filed. Section 42, on the other hand, deals with gifts or transfers *inter vivos* such that if any of the deceased's properties was settled or given to any of the beneficiaries during the deceased's lifetime, that part of property would be taken into account in distribution of the deceased's net intestate estate. There is no evidence that such was the case in respect of the deceased's estate.

The deceased died in 2011, long after the Law of Succession Act came into force; it therefore follows that in the absence of any evidence contrary to the prescribed statutory scheme of distribution of such an estate, the distribution of her estate is undoubtedly subject to the intestacy provisions of the Act and, in particular, section 38 thereof. That provision of the law does not discriminate beneficiaries based on their sex or their marital status in distribution of an intestate's estate.

To this extent, I would agree with the protestors' protest that the deceased's estate ought to be shared equally amongst all her children irrespective of their sex or marital status.

Both parties are in agreement that Esther Njeri Wanjau is a widow to one of the deceased's sons and therefore she would be entitled to have what her husband would have inherited. She will therefore have a share of the estate equivalent to what each of the rest of the deceased's children are entitled to subject however to life interest considering that she had nine children with her deceased husband.

In the final analysis, I hereby dismiss the summons for confirmation of grant dated 26 February, 2011 and in the same vein allow the protestors' protest in terms I have proposed. For avoidance of doubt, I hereby order that land Title No. Thegenge/Gathuti/710 be shared out equally amongst the following people:

1. Esther Njeri Wanjau
2. Jackson Ndungu Ngugi
3. John Kabathu Ngugi
4. Peter Wachira Ndirangu
5. Naftaly Wachira Ngugi
6. Gladys Wanjiku Kingori
7. Susan Waithira Mukiri
8. Mary Wambui Maina
9. Mary Muthoni.

Except for Esther Njeri Wanjau who's share is subject to life interest, the rest of the shares shall be registered in the respective names of the beneficiaries absolutely. Parties shall bear their respective costs since this is a family dispute. It is so ordered.

Dated, signed and delivered in open court this 5th day of April, 2019

Ngaah Jairus

JUDGE