



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

SUCCESSION CAUSE NO.3013 OF 2013

IN THE MATTER OF THE ESTATE OF KESIA WANJIKU KAHIGA - DECEASED

RULING

1. This case relates to the Estate Kesia Wanjiru Kahiga (Deceased) who died on 22nd September, 1993.
2. The Objector in this case MARGARET WANJIRU GACHANGI was subsequently issued with grant of Letters of Administration in respect of the said estate on 28.9.1995 confirmed on 26.4.1996.
3. The Petitioner herein ELIUD MAINA MWANGI filed for summons for revocation on 26.11.2001 contending that there was no woman to woman marriage between MARGARET WANJIRU GACHANGI and the deceased.
4. The Court found that the deceased was validly married to MARGARET WANJIRU GACHANGI under Kikuyu Customary Law and dismissed the Summons for revocation dated 26.11.2001
5. Prior to her death, the deceased in this case was married to JONATHAN KAHIGA MWANGI (Deceased) who died on 20.6.1979 who was a brother to the Petitioner in this case, ELIUD MAINA MWANGI. KESIAH and JONATHAN had no children.
6. The Objector MARGARET WANJIRU GICHANGI had four children – MICHAEL MWANGI, JAMES NJOMO, WILSON MAINA and GRACE WANGUI before they moved into the home of KESIAH WANJIRU KAHIGA in 1987.
7. The Petitioner appealed against the decision of the High Court and the Court of Appeal allowed the Appeal and nullified the grant issued to the Objector on 28.9.1995 and confirmed on 26.4.1996.
8. The file was sent back to the High Court for the Objector and her children to file an **“appropriate application before the high Court as dependants of the deceased”** and also to provide an opportunity for the Petitioner’s claim to be heard.
9. The Petitioner, following the Court of Appeal decision on 11.10.2013 applied for letters of administration on 21.11.2013 and the grant was issued to him 7.3.2014.
10. The Petitioner filed a summons for confirmation of the grant on 22.5.2015 and on 14.9.2015, the objector filed an Affidavit of Protest in which she deposed as follows:
 - (i) THAT the Estate of KESIAH WANJIKU KAHIGA (Deceased) consisted of the following properties;
 - a) LOC 11/MUCHUNGUCHA/1996
 - b) LOC 13 /GITUGI/1581
 - c) LOC 13/GITUGI/230
 - (ii) THAT on 11.10.2013 the Court of Appeal delivered a Judgment in which it declared the Objector and her children dependants of the Estate of KESIAH WANJIKU KAHIGA (Deceased)
 - (iii) That the Properties are no longer in the names of Kesiah Wanjiku Kahiga as they are now owned by:
 - a) LOC 11/MUCHUNGUCHA/1996 now registered in the names of STEPHEN MWANGI and JOSEPH KIHARA MWANGI yet the Petitioners purported to allocate it to the Protestor’s Children.

b) LOC 13/GITUGI/230-It is now in the name of Protestor yet the Petitioner has purported to allocate it to SAMUEL KIHARA NDIBA.

c) LOC 13 /GITUGI/1581 – now in the name of Protestor yet the Petitioner has allocated it to himself.

11. The Parties filed Witness Statements which they adopted as their evidence in chief during the hearing and they were cross examined on the same.
12. The Protestor's evidence in summary was that the Court of Appeal recognized her and her children as dependants of the Estate of KESIAH WANJIRU KAHIGA (deceased).
13. The Protestor said the Properties comprising the estate of KESIAH WANJIRU KAHIGA (Deceased) did not belong to the family of KESIAH'S husband and the same were purchased by KESIAH and her husband.
14. The petitioner who filed a Replying Affidavit to the Protest and a witness statement said the grant issued to the Protestor was revoked by the Court of Appeal and he served the Protestor with a citation to accept or refuse letters of administration and subsequently he filed the Petition herein and he was issued with a grant which he asks this court to confirm.
15. The Petitioner said in his evidence in Court that the Protestor sold LOCATION 11/MUCHUNGUCHA to 3rd parties while the appeal was pending in order to defeat the cause of Justice.
16. He asked for confirmation of the grant issued to him on 7.3.2014 and for the property to be distributed as proposed.
17. He said Loc. 13/GITUGI/230 to be transferred to his Advocate SAMUEL KIHARA NDIBA to cover legal fees incurred in this Succession Cause.
18. I have considered the summons for confirmation giving rise to the Protest herein. I have also perused the Court of Appeal decision rendered on 11.10.2013.
19. I find that the Court of Appeal made a finding that the Protestor was not a "widow" of KESIA WANJIRU KAHIGA but that KESIAH WANJIRU KAHIGA (Deceased) had taken the children of the Protestor into her family as her own within the meaning of Section 29 of the Law of Succession since 1987 and she was providing for them.
20. I therefore find that the Protestor has no right to inherit the Property of KESIAH WANJIRU KAHIGA (Deceased) since the Court of Appeal found that she was not a widow of the deceased.
21. However, her children qualify to be heirs by virtue of Section 29 of the Law of Succession Act since they were children the deceased had taken as her own and she was maintaining them as at the time of her death.
22. Concerning the claim that the property which belongs to the Estate of KESIAH WANJIRU KAHIGA (Deceased) was family property which belonged to the Petitioner and his brother JONATHA KAHIGA MWANGI, I find that the Court of Appeal referred this case back to provide the Petitioner an opportunity to prove the said assertion.
23. I find that the Petitioner did not produce any evidence that the property belonging to the Estate of KESIAH WANJIRU KAHIGA was his family property.
24. The evidence on record is that the Petitioner's brother, JONATHAN KAHIGA MWANGI (DECEASED) and his KESIAH WANJIRU KAHIGA(also deceased) bought the said properties from 3rd parties.
25. I have perused the witness statement filed by the Petitioner dated 21.3.2017 and his affidavit in reply to the Protest by the Objector dated 19.10.2015 and also his oral evidence and I find that there is no iota of evidence that the Property KESIAH inherited from her husband was family land belonging to the petitioner and Kesiah's husband.
26. I find that the Petitioner has failed to produce evidence that the property the subject of this case is his family property.
27. I rely on the Court of Appeal finding that the Objector and her Children were dependants of KESIAH WANJIRU KAHIGA within the meaning of Section 29 of the Law of Succession Act and I find that they are entitled to inherit the Property of the deceased.
28. I find that the Petitioner has failed to prove ownership of the said property and I accordingly find that he has no right to inherit the said property.
29. I accordingly revoke and annul the grant of Letters of Administration issued to the Petitioner ELIUD MAINA MWANGI on 7.3.2014.
30. I direct that a fresh grant to issue in the joint names of the objector's children MICHAEL MWANGI WANJIRU, JAMES NJOMO WANJIRU, WILSON MAINA and GRACE WANJIRU.
31. I accordingly find that SAMUEL KIHARA NDIBA has no right to inherit the Estate property namely LOC 13/GITUGI/230

32. I find that 11/MUCHUNGUCHA/1996 is not available as the same had been sold to 3rd parties. There is also evidence that the Objector and her Children are in occupation LOC/GITUGI/1581.

33. Finally I direct that the four children of the Objector to be issued with a fresh grant and the same to be confirmed within 6 months upon being issued.

Orders to issue accordingly.

DELIVERED, SIGNED AND DATED IN OPEN COURT THIS 5th DAY OF APRIL, 2019

ASENATH ONGERI

JUDGE OF THE HIGH COURT OF KENYA, NAIROBI