



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

FAMILY DIVISION

SUCCESSION CAUSE NO. 3381 OF 2003

IN THE MATTER OF THE ESTATE OF PITY MUGURE KIHORO (DECEASED)

WANYIRI KIHORO.....OBJECTOR/APPLICANT

VERSUS

JANE NYAMBURA KIHORO...PETITIONER/RESPONDENT

JUDGMENT

1. The deceased Pity Mugure Kihoro died intestate on 16th November 1981. She was the widow of Nimrod Kihoro Wambugu who had died in 1961. Following the death of Nimrod, **Succession Petition No. 90 of 1973** was filed in the High Court at Nyeri to succeed him. He was the owner of Aguthi/Gatitu/513 and Aguthi/Gatitu/255. He and the deceased had 9 children: 5 sons and 4 daughters. The children were:-

- (a) Margaret Wairimu (deceased);
- (b) Jane Nyambura Kihoro (the petitioner/respondent);
- (c) Karige Kihoro (DW 4);
- (d) Wanyiri Kihoro (the objector/applicant);
- (e) Irene Waigumo Kihoro (DW 2);
- (f) Macharia Kihoro (deceased);
- (g) Wamahiu Kihoro (deceased);
- (h) Lucy Wangari (deceased); and
- (i) Mwagiru Kihoro (deceased).

2. In the succession cause to inherit Nimrod, Aguthi/Gatitu/513 was shared so that the deceased got 4.2 acres, and four of his sons (the applicant, Macharia Kihoro, Wamahiu Kihoro and Mwagiru Kihoro) got each 4 acres, except for Karige Kihoro who got 4.2 acres. Aguthi/Gatitu/255 was to be kept for Irene Waigumo Kihoro.

3. Aguthi/Gatitu/513 was subdivided and fresh titles issued. What was registered in the name of the deceased was Aguthi/Gatitu/1494.

4. When the deceased died the petitioner filed the instant cause in which she petitioned for the grant of letters of administration intestate. She indicated that the deceased's estate to be Aguthi/Gatitu/513 and Aguthi/Gatitu/255. The petition was materially defective because the deceased was not the owner of Aguthi/Gatitu/513. Secondly, the objector was not party to the filing of the petition and his consent was not sought. She took out a citation which she said was served on his wife. He denied that his wife was served with the citation. He stated that at the time when the process server say he served his wife in Nyeri she was in hospital in Nairobi. There is no indication that effort to serve the objector personally was made. I find that his consent was not sought and he had not renounced his right to petition for the grant.

5. When the grant was confirmed, Aguthi/Gatitu/513 went to the petitioner and Aguthi/Gatitu/255 went to Irene Waigumo Kihoro. There is no dispute that the objector was not present in court when the estate was shared. There is a consent he allegedly provided, but he denies that he signed the consent that accompanied the affidavit in support of the summons for confirmation. When the petitioner was cross-examined by the objector on the issue of his alleged signature in the consent filed with the affidavit in support of the summons for confirmation, she responded as follows:-

“I don’t know whether the signature attributed to the applicant in application for confirmation belongs to him.”

She was the one who filed the affidavit and consent. It is clear that the objector did not sign the consent, and therefore did not participate in distribution of the estate that belonged to his deceased mother.

6. The evidence of the petitioner (supported by Irene Waigumo Kihoro) was that the 4.2 acres left for the deceased was meant for the daughters, as the sons had already benefitted from their father’s estate. This was, however, contested by the objector, who was supported by Karige Kihoro. Their evidence was that the 4.2 acres was to be kept by the deceased for all the children in the family. Karige Kihoro, however, signed the consent filed by the petitioner.

7. The objector sought the revocation for the grant to the petitioner. His application was dated 5th April 2012. It was on the ground that his signature to support the confirmation was a forgery, and that Aguthi/Gatitu/513 that was the subject of the grant and certificate of confirmation did not belong to the deceased at the time of her death. The application was opposed by the petitioner. It was heard orally.

8. After the consideration of the evidence as shown above, I accept that the objector did not participate in the filing of the petition and his consent was not sought. His signature was forged in the consent that was the basis of the confirmation of the grant and the distribution of the deceased’s estate. Lastly, Aguthi/Gatitu/513 that was the subject of the petition and the certificate of confirmation did not exist, and did not belong to the deceased at the time of her death. Fraud on the part of the petitioner has been proved. Reference to Aguthi/Gatitu/ 513 was material defect.

9. Consequently, I allow the application. I revoke with costs the grant issued to the petitioner on 24th August 2004 and set aside the certificate of confirmation issued to her on 28th May 2005.

10. So that the matter can proceed, I issue a fresh grant of letters of administration in respect of the estate of the deceased Pity Mugure Kihoro jointly to Jane Nyambura Kihoro and Wanyiri Kihoro. They, or any of them, shall, within 30 days, file and serve an application for the confirmation of the grant.

DATED and DELIVERED at NAIROBI this 20TH day of NOVEMBER, 2019.

A.O. MUCHELULE

JUDGE