



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA IN NAIROBI
IN THE MATTER OF ESTATE OF GABRIEL MWANGI NJUGUNA
(DECEASED)
SUCCESSION CAUSE 1552 OF 2015
JUDGMENT

INTRODUCTION

On 16th August 2016, this Court delivered a Ruling on the following orders;

1. The application filed on 10th December 2015 is compromised as follows;

The appointment of the surviving widow of the deceased Tabitha Wanjiku Mwangi as administrator of the estate of the deceased under Section 66 of Law of Succession Act Cap 160 is upheld but on the following conditions;

2. The administrator shall include the grandchildren of the deceased in the petition as required under Section 51 (2) (g) of Law of Succession Act Cap 160

3. The administrator shall exercise the statutory mandate under Section 83 of Law of Succession Act Cap 160.

4. The administrator shall not use the grant to harass, intimidate or interfere with 1st and 3rd & 4th Objectors and/or evict them from the suit premises/properties; NDARUGU/GATHAITE/51 and PLOT NAIROBI/BLOCK 116/1173 & Plot No. NAIROBI/BLOCK/166/1166 until confirmation of grant if not unanimously agreed on until hearing and determination of the administration of the deceased's estate.

5. The administrator shall ensure the deceased's daughter Teresia Nduta Kimani obtains her beneficial interest from the estate of the deceased.

6. The administrator shall ensure the whereabouts and/or confirm disappearance of Magdalene Nduta Karanja formally and her share of the estate shall be held in trust by administrator.

SUMMONS FOR CONFIRMATION

The Petitioner /administrator through Counsel filed Summons for Confirmation on 1st February 2017. The list of beneficiaries include widow, 10 daughters of deceased and 1 daughter in law and 3 grandchildren as follows;

- a) Tabitha Wanjiku Mwangi - Widow**
- b) Teresia Nduta Kimani - Daughter**
- c) Anne Muthoni Njuguna - Daughter-in-law**

(As an administrator of the Estate of Joseph Njuguna Mwangi)

- d) Anne Wambui Waweru - Daughter**
- e) Magdalene Nduta Karanja - Daughter**

- f) Mary Wambui Mwangi - Daughter**
- g) Lucy Waithera Mwangi - Daughter**
- h) Pauline Nyamwitha Mwangi - Daughter**
- i) Esther Muthoni Mwangi - Daughter**
- j) Jane Waringa Mwangi - Daughter**
- k) Emily Wanjiru Mwangi - Daughter**
- l) Margaret Waruguru Mwangi - Daughter**
- m) Agatha Tabitha Wanjiku Njuguna -Grand-daughter**
- n) Gabriel Mwangi Njuguna -Grandson**
- o) Mathew Kibugi Njuguna - Grandson**

(As beneficiaries of the Estate of the late Joseph Njuguna Mwangi, the son of the Deceased)

The list of assets that comprised of deceased's estate was/were outlined in terms of land, bank accounts and shares as follows;

Land

- a) Ndarugu/Gathaite/51
- b) Ndarugu/Gathaite/979
- c) Ndarugu/Gathaite/1043
- d) Thika/Block 19/614
- e) Thika Municipality Block 19/2117
- f) Juja/Kiaura Block 7/1420
- g) Juja/Kiaura Bloc 7/742
- h) Juja/Kiaura Block 8 (Mangu)/1727
- i) Nairobi Block 116/1166
- j) Nairobi Block 116/1173

Bank Accounts

- i) Barclays Bank of Kenya Limited
- ii) Standard Chartered Bank of Kenya Limited

Shares

- i) Kenya Airways Limited
- ii) Kenya Commercial Bank Limited
- iii) Barclays Bank of Kenya Limited
- iv) NIC Bank Limited
- v) Standard Chartered Bank Limited

The proposed mode of distribution of the deceased's estate was contested by protestors. The mode of distribution was/is as follows;

Description	Name	Sign
<p>Nairobi Block 116/1166 & Nairobi Block 116/1173</p>	<p>Tabitha Wanjiku Mwangi Whole Absolutely</p>	<p>Signed</p>
<p>All Shares / Stocks & Bank Accounts: - Savings & Fixed deposit accounts at Barclays Bank of Kenya - Savings & Fixed Deposit accounts at Standard Chartered Bank</p>	<p>Tabitha Wanjiku Mwangi Whole Absolutely</p>	<p>Signed</p>
<p>Ndarugu/Gathaite/51 & Ndarugu/Gathaite/979 & Less: - 1.50 acre common use land Council Plot: Ndarugu/Gitwe/T.95 0.28 acres exchanged with Ndarugu/Gathaite/980 excised from Ndarugu/Gathaite/979 for Mwimuto tea leave collection centre. Both parties are in physical possession but title process not complete.</p>	<p>1. Teresia Nduta Kimani 2. Anne Wambui Waweru 3. Magdalene Nduta Karanja 4. Mary Wambui Mwangi 5. Lucy Waithera Mwangi 6. Pauline Nyamwitha Mwangi 7. Margaret Waruguru Mwangi 8. Esther Muthoni Mwangi 9. Jane Waringa Mwangi 10. Emily Wanjiru Mwangi Equally</p>	<p>All Signed</p>

<p>Ndarugu/Gathaite/1043</p> <p>Less:</p> <p>0.125 acre sold to Ithagana Tea Buying Centre. Buyer in physical possession but transfer not processed.</p>	<p>1. Anne Muthoni Njuguna</p> <p>2. Agatha Tabitha Wanjiku Njuguna</p> <p>3. Gabriel Mwangi Njuguna</p> <p>4. Mathew Kibugi Njuguna</p> <p>Equally</p>	<p>Not signed</p>
<p>Juja/Kiaura Block 8 (Mangu)/1727</p>	<p>Teresia Nduta Kimani</p> <p>Whole</p> <p>Absolutely</p>	<p>Not signed</p>
<p>Juja/Kiaura Block 7/1420</p>	<p>1. Magdalene Nduta Karanja</p> <p>2. Emily Wanjiru Mwangi</p> <p>Equally</p>	<p>Signed</p>
<p>Thika Municipality Block 19/614</p>	<p>1. Mary Wambui Mwangi</p> <p>2. Lucy Waithera Mwangi</p> <p>3. Margaret Waruguru Mwangi</p> <p>Equally</p>	<p>Signed</p>
<p>Thika Municipality Block 19/2117</p>	<p>1. Pauline Nyamwitha Mwangi</p> <p>2. Esther Muthoni Mwangi</p> <p>3. Jane Waringa Mwangi</p>	<p>Signed</p>
<p>Juja/Kiaura Block 7/742</p>	<p>1. Agatha Tabitha Wanjiku</p>	<p>Not signed</p>

	Njuguna	
	2. Gabriel Mwangi Njuguna	
	3. Mathew Kibugi Njuguna	
	Equally	

The protestors did not sign/file written consents to the said distribution.

OBJECTION PROCEEDINGS

The Court heard the protests during Objection proceedings. Anne Muthoni Njuguna PW1, widow of Joseph Njuguna Mwangi, only son of deceased who predeceased him stated was married to her husband in 1981. They rented a house in Zimmerman as he constructed a house on Plot Nairobi/Block 116/1173 while he collected rent from Nairobi/block/116/1166. When the house was completed on Nairobi/Block/116/1173 they moved in and collected rent from Nairobi/Block/116/1166.

The 2 properties are also referred to as Block 116/761 which consist of 4 units of 1 bedroom houses and Block 116/771 which consists of 4 units of 2 bedroom houses. She referred to them as matrimonial properties.

PW1 stated that she recalls the deceased gave her husband the 2 properties.

In 1995, they moved to Kiambu High School teachers' house and rented both properties and collected rent. PW1 and her husband cultivated Ndarugu/Gathaite 51. She admitted that her husband purchased land and built their home in Thimbigwa where she and the children live. Therefore she claims she is entitled to the 3 properties exclusively from the deceased's estate. She retired and these houses' rent is her income.

Albert Mwangi Wanjiku PW2 stated he was employed by Joseph Njuguna Mwangi s/o deceased and he built for him houses in Mathare for him, he issued tenancy agreement letters to tenants, collected rent and deposited in his account.

Teresia Nduta Kimani PW3 daughter of the deceased and his 1st wife, her mother, Katarina Njeri who died in 2006 and Tabitha Wanjiru was/is step mother. She objected to mode of distribution in summons for confirmation because she was not allocated any property as beneficiary of the deceased's estate. She proposed that she is allocated 4 acres of Gathaite/Ndarugu/51 which is 7 acres and Co objectors also want a share of the suit property and Thika Municipality Block 19/217.

Anne Muthoni ought to remain on Gathaite /Ndarugu/1043.

There is Ndarugu/Gathaite/979 where her mother is buried.

Everyone in the family cultivates Gathaite/Ndarugu/51.

PETITIONER'S EVIDENCE:

She is widow of the deceased and she filed the summons for confirmation as Petitioner/Administrator of the deceased's estate and in compliance of Court's Ruling of 16th August 2016. She is 2nd wife of deceased and they had/have 10 children, 1 step child and 3 grandchildren from her late son Joseph Njuguna Mwangi and widow Ann Muthoni Njuguna PW1.

The Petitioner /Administrator confirmed she filed summons for confirmation with proposed mode of distribution which 1st 2nd 3rd & 4th & 5th Objectors who are daughter in law and her 3 children and step daughter who objected to the mode of distribution. The Petitioner confirmed she called family meetings to discuss and agree on the mode of distribution of deceased's estate and she attached the minutes of the meeting to her affidavit.

She stated that her late husband was sick for a long time and a lot of money was spent on medical expenses and the estate was depleted. Her son Joseph Njuguna Mwangi died in 2003 and predeceased her late husband who died in 2014. PW1 applied for grant of letters of administration which issued on 15th December 2003 and confirmed on 30th November 2004. The petitioner did not ask or get any property (ies) from their late son's estate.

The properties of her late son's estate did not include Nairobi/Block 116/1173 and Nairobi Block 166/1166 which belonged to deceased herein. The deceased acquired them in 1977 and commenced development of the Plots while their son was in University. Therefore, they were not given to their son as gift *inter vivos* except the land the deceased gave their son in Thindigwa and they built their home there where they live to date.

The Petitioner stated that after his studies, their son assisted in construction of the building on the 2nd Plot and helped to collect rent and

deposit in his father's account and helped with upkeep of the family. Later they moved from the 1st Plot to their home where DW1 was a teacher. After, her son's death, DW1 continued to collect rent from the Plots and when the deceased fell ill she remitted funds for his medical care and support.

Thomas Maosa DW2 advocate of the High Court of Kenya testified that he acts for Roysambu Cooperative Society since 1990s to date. He is custodian of records of the Society's properties and membership registers and allotment records.

He said that deceased's daughter, Mary Wambui Mwangi approached him and sought original documents relating to Nairobi/Block 116/1173 and Nairobi Block 166/1166. He produced that Gabriel Mwangi Njuguna was registered member of the Society and was allocated the 2 Plots. He was paid Ksh 52,000/= on 24th June 2014 and he produced the documents and he signed the same. The deceased was allocated the Plots in 1992 as per records. He produced the same in Court as exhibits.

Mary Wambui Mwangi, PW3 daughter of the deceased stated that her father, the deceased acquired the 2 Plots and started construction in or about from 1979 and constructed 8 units 4 of 1 bedroom each and 4 of 2 bedrooms each. Her late brother Joseph Njuguna Mwangi after completion of University studies in 1980 was asked to assist his father in construction of the 2nd Plot houses. He moved into 1 of the 2 bedroom flat. Later her sister Anne Wambui Waweru came back from UK and occupied 1 bedroom flat. From 1985-1986 her late brother and his family moved to Kiambu.

She informed Court that her brother collected rent and deposited in the father's account and /or handover the cash as their instructed. The rent collected was used for upkeep of their parents and younger siblings. After her brother's demise, the deceased asked her to pursue the regularization of his parcel of land and shares. She visited and liaised with advocates for Roysambu Housing Cooperative Society and confirmed ownership of the properties of the deceased.

After her husband's demise, the 1st Objector his widow continued to collect rent and contributed to deceased's medical care. However, the said properties remained in the deceased's name and developed by the deceased.

ISSUES

1. Was 1st Objector gifted Nairobi/Block 116/1173 and Nairobi Block 166/1166 & Ndarugu Gathaite/1043 through her late husband son to the deceased by the deceased?

2. The mode of distribution of deceased's estate as per summons for confirmation of grant and the Protests.

DETERMINATION:

Section 35, 38 & 40 of Law of Succession Act Cap 160 dictate the mode of distribution of the deceased's estate. The deceased was married to the 5th Objector's mother and after her demise he married the Petitioner/Administrator and they had 10 children.

Therefore the Petitioner/Administrator widow of the deceased and 11 children are beneficiaries of the estate of the deceased. The 1st Objector widow of deceased's son and children are entitled to the deceased's son beneficial interest from deceased's estate.

With regard to gift *inter vivos* as prescribed by Section 42 of LSA Cap 160, PW1 Anne Muthoni Njuguna stated in this Court during hearing and in the proceedings culminating to Ruling of 16th August 2016 that Ndarugu/Gathaite 51, Nairobi/Block 116/1173 and Nairobi Block 166/1166 were gifts from the deceased to his son who predeceased him. She stated that these were matrimonial properties. It was pleaded that they resided in the said premises and collected rent and were threatened to be evicted. This Court granted orders to restrain the Petitioner/Administrator from evicting them.

From the pleadings and oral evidence it is now confirmed that the 1st Objector and her 3 children did not reside in the premises as earlier alleged. The evidence adduced during the hearing by Petitioner DW1 and daughter DW3 is that 1st Objector and her family moved out of the premises in Zimmerman Nairobi/Block 116/1173 in the late 1995 to Kiambu where 1st Objector, a teacher had a house at the school. The 1st Objector confirmed this fact in her affidavit. After they built their home in 1991 on parcels of land the deceased's son was given by his father, they established their matrimonial home and that is where the deceased's son was buried. The evidence of being given land by deceased was controverted by sale agreements attached to Anne Muthoni Njuguna of 18th July 2017.

The 1st Objector stated that after she obtained a grant of her husband's estate, she entered into fresh agency agreements with tenants of the premises situate in Zimmerman and collected rent. During her husband's lifetime and her father in law's lifetime, the Petitioner and the deceased did not demand the rent.

The Petitioner and daughter DW1 & DW3 reiterated that if the suit properties were bequeathed as gifts to their son and brother respectively, then in confirmation of grant of the deceased's estate, in Succession Cause 2858 of 2003 in the Estate of Joseph Njuguna Mwangi these properties; Ndarugu/Gathaite 51, Nairobi/Block 116/1173 and Nairobi Block 166/1166 are not included; a copy attached to the Petitioner's list of documents of 20th January 2017

The issue of gift *inter vivos* of the stated items, apart from 1st Objector claiming so, no evidence was adduced to confirm when the deceased bequeathed the said properties to his son and who witnessed the same. The allegation is controverted by evidence that the deceased's son collected rent for his father in the 1st Plot and helped develop the 2nd Plot and collected for him too. Upon his demise, DW1 continued to collect rent and helped with the deceased's medical bills. Therefore in the absence to prove gift *inter vivos* the Court finds the suit properties

belonged to the deceased as confirmed by DW3 and are available for distribution.

DISTRIBUTION

1. Nairobi Block 116/1166 & Nairobi/Block 116/1173 share equally;

- a) Tabitha Wanjiku Mwangi w/o deceased- Nairobi/Block 116/1166.
- b) Anne Muthoni Njuguna w/o deceased's son – Nairobi/Block 116/1173.

2. Tabitha Wanjiku Mwangi w/o deceased to inherit whole the following;

Bank Accounts;

- a) Barclays Bank
- b) Standard Chartered Bank

All shares/stocks

- c) Kenya Airways Ltd
- d) Kenya Commercial Bank Ltd
- e) Barclays Bank Ltd
- f) NIC bank Ltd
- g) Standard Chartered Bank
- h) Mangu Investments Ltd

3. The following properties shall be shared equally between the following beneficiaries;

- a) Ndarugu /Gathaite/51
- b) Ndarugu/Gathaite/979 (graveyard area of 1st wife of deceased to remain with Teresia Nduta Kimani)

Beneficiaries

- a) Teresia Nduta Kimani
- b) Anne Wambui Waweru
- c) Magdalene Nduta Karanja
- d) Mary Wambui Mwangi
- e) Lucy Waithera
- f) Pauline Nyamwitha
- g) Margaret Waruguru
- h) Esther Muthoni
- i) Jane Waringa Mwangi
- j) Emily Wanjiru Mwangi

4. Ndarugu /Gathaite/1043 shall be shared as follows;

- a) Anne Muthoni Njuguna

b) Agatha Tabitha Wanjiku Njuguna

c) Gabriel Mwangi Njuguna

d) Matthew Kibugi Njuguna

5. Juja /Kiaura Block 8 (Mangu) 1727 to be shared by;

a) Esther Muthoni Mwangi

b) Jane Waringa Mwangi

c) Anne Wambui Waweru

6. Juja /Kiaura Block 7/1420 shared equally by;

a) Magdalene Nduta Karanja

b) Emily Wanjiru Mwangi

c) Pauline Nyamwitha Mwangi

7. Thika Municipality Block 19/614

a) Margaret Waruguru Mwangi

b) Lucy Waithera Mwangi

c) Mary Wambui Mwangi

8. Thika Municipality Block 19/2117

a) Teresia Nduta Kimani

9. Juja /Kiaura Block 7/742

a) Agatha Tabitha Wanjiku Njuguna

b) Gabriel Mwangi Njuguna

c) Mathew Kibugi Njuguna

DATED, SIGNED and DELIVERED at NAIROBI this 16TH DAY OF NOVEMBER, 2018.

M.W.MUIGAI

JUDGE –FAMILY DIVISION –HIGH COURT

IN THE PRESENCE OF:-

DR. KENYARIRI FOR OBJECTOR

MRS. WAMBUGU FOR PETITIONER