



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MURANG'A

SUCCESSION CAUSE NO 150 OF 2012

***IN THE MATTER OF THE ESTATE OF NJOROGE NGUNGO alias NJOROGE NDUNGU,
DECEASED***

AMKAN NJOROGE NGIGI.....ADMINISTRATOR

VERSUS

SARAH NJERI NDUNG'U.....PROTESTOR

PRELIMINARY JUDGMENT

1. This judgment concerns the **summons dated 12/11/2013** for confirmation of grant in this cause. The grant of letters of administration intestate was made on 21/03/2013 to **Amkan Njoroge Ngige** (the Administrator). In his affidavit sworn in support of the application, the Administrator has proposed at paragraph 6 that the parcel of land constituting the Deceased's estate, LR LOC 7/KAHARO/585 be shared as follows –

(a) Amkan Njoroge Ngige (Administrator) - 1.6 acres

(b) David Nduati Mbau - 0.5 acres

(c) Beatrice Wambui Ngugi - 0.2 acres

2. Sarah Njeri Ndungu (the Protestor filed affidavit of protest on 22/11/2013. She stated therein that she was the widow of a son of the Deceased called Ndung'u Njoroge "who disappeared from home in the early 1970s and has never been heard of since"; that she and her said husband were blessed with three children (Reuben Waweru Ndung'u, John Njoroge Ndung'u and Lucy Wanjiru Ndung'u); and that the Deceased was survived by –

(a) Ngugi Njoroge – son

(b) Amkan Njoroge Ngugi (Administrator and son of Peter Ngugi, another deceased son of the Deceased.

(c) Sarah Njeri Ndung'u (Protestor)

3. The Protestor has further deponed that Ngugi Njoroge has no interest in the state as he had been given **inter vivos** his inheritance, a piece of land, by the Deceased; that David Nduati Mbau and Beatrice Wambui Ngugi named as beneficiaries by the Administrator are neither children of the Deceased nor his lawful beneficiaries; and that therefore the Deceased's parcel of land LOC 7/KAHURO/585 (which measures 2.3 acres) ought to be shared equally between the Administrator and the Protestor.

4. Initially (on 17/03/2014) the court directed that the contested confirmation application be heard by way of *viva voce* evidence. However, subsequently the learned counsels for the parties agreed that the matter be disposed of by way of written submissions, and on 13/05/2014 the court adopted that consent. The parties then subsequently filed their submissions. Those of the Administrator were filed on 14/08/2014 while the Protestor's were filed on 08/09/2014. I have read and considered those submissions.

5. In his submissions the Administrator takes issue with the Protestor's *locus*. He argues that the Protestor was not a widow of a deceased son of the Deceased, and that she is a stranger to the Deceased's estate. Reliance is placed upon some witness statements filed in the court record. But it must be remembered that no witness has testified under oath and adopted any witness statement on record as his or her own testimony-in-chief.

6. In her submissions the Protestor has taken the stand she is a legitimate survivor of the Deceased as the widow of a deceased son of the Deceased. She has also questioned the *locus* of David Nduati Mbau and Beatrice Wambui Ngugi *vis-à-vis* the Deceased's estate.

7. In his own affidavit (P & A 5) sworn in support of the petition for grant, the Administrator named the following as the Deceased's survivors –

(a) Ngugi Njoroge – whom he states is a brother of the Deceased but whom the Protestor states is a son of the Deceased.

(b) Amkan Njoroge (Administrator) – grandson

(c) Serah Njeri Ndung'u- whom he states is a daughter-in-law of the Deceased.

8. How then can the Administrator turn around now and argue in his submissions that the Protestor is not a survivor of the Deceased – contrary to his own document filed in court? I am satisfied upon the Administrator's own affidavit (Form P&A5) that the Protestor is indeed a survivor of the Deceased, being the widow of a deceased son of the Deceased.

9. As for David Nduati Mbau and Beatrice Wambui Ngugi, named as beneficiaries by the Administrator in his affidavit sworn in support of the summons for confirmation, it is to be noted that he did not name them as the Deceased's survivors in his Form P & A 5. He has not even attempted to explain how their interests in the Deceased's estate have arisen. I am not satisfied that they are the Deceased's survivors, or that they have a legitimate claim in the Deceased's estate.

10. Before the court gives its final judgment, let Ngugi Njoroge (whom the Protestor says is a son of the Deceased who was given his inheritance *inter vivos*) be served to appear before this court on a date to be given for him to state his stand. Thereafter the court shall deliver its final judgment. It is so ordered.

DATED AND SIGNED AT MURANG'A THIS 9TH DAY OF MARCH 2017

H P G WAWERU

JUDGE

DELIVERED AT MURANGA THIS 10TH DAY OF MARCH 2017