



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

SUCCESSION CAUSE NO. 1867 OF 2010

IN THE MATTER OF THE ESTATE OF GACHOGIA WAMUHU (DECEASED)

JUDGEMENT

1. The deceased herein died on 1st October 2005. The Chief of Kabete Location confirmed by a letter dated 8th October 2008, that the deceased had married three times, but by the date of his death one of the three wives had died, the first wife. From the first house he was survived by children only – Ann Nyakarura, Lucy Njambi and Priscilla Wanjiku Kahiro. From the second wife, he was survived by the widow, Margaret Wanjiku Gachugia, and her three children – Njuguna Gachugia, Lucy Wanjiru Mungai and Njoki Gachugia. From the third house the deceased was survived by the widow, Esther Nungari Gachugia, and her seven children, being John Njoroge, Nancy Wangui Mungai, Hannah Nyakarura, Nancy Gathoni, James Chege, Joan Wanjiku and Sarah Wakanyi.

2. Representation was sought in the cause was sought by the surviving widows, Margaret Wanjiku Gachugia and Esther Nungari Gachugia. He is expressed to have been survived by the fifteen individuals listed in the Chief's letter referred to above. He is also expressed to have died possessed of Ruiru/Ruiru West Block 1/1917, Kabete/Kabete/T48, Gilgil/Karunga Block 4/ 189 and Gilgil/Karunga Block 2/688. A grant of letters of administration intestate was accordingly issued to the petitioners on 20th September 2011.

3. What I have to determine is the summons for confirmation of grant dated 11th March 2013, brought at the instance of the joint administrators. It proposes that the estate devolves upon the two widows and administrators, Margaret Wanjiku Gachugia and Esther Nungari Gachugia, absolutely.

4. The response to the application is by Hannah Nyakarura. She swore her affidavit on 28th April 2015. She is a child from the deceased first wife of the deceased. She has two sisters from her mother's house. She objects to the proposed mode of distribution of the estate. She proposes that her mother's house should be allocated Ruiru/Ruiru West Block 1/1917 and Kabete/Kabete/T48, while the second house should take Gilgil/Karunga Block 4/ 189 and the third house Gilgil/Karunga Block 2/688. She argues that the last two houses occupy the Gilgil properties, while the Kiambu properties are smaller compared to the rest.

5. Directions were given on 22nd September 2015, for disposal of the said application by way of oral evidence.

6. The oral hearing commenced on 11th July 2016. The first witness was Kariuki Muhi, a brother of the deceased. He testified that the deceased had three wives. He stated that the deceased had settled Margaret Wanjiku at Kibonde, that is to say Gilgil/Karunga Block 4/ 189, while Esther Nungari had been settled at Nuthu, also known as Gilgil/Karunga Block 2/688. The two widows still live on the said parcels of land. He alleges that the protestor, the daughter from the first house, had been given a property at King'eero,

Kabete. He also stated that the Ruiru plot was occupied by an unnamed child from the third house. In his view, the property at Kabete and Ruiru ought to be given to the first house.

7. The second witness was the protestor, Hannah Nyakarura. She avers that she was not objecting to the distribution, but was only asking the court to award the Kabete and Ruiru property to her and let the other families keep the property where they were residing, Gilgil/Karunga Block 4/ 189 and Gilgil/Karunga Block 2/688. She asserted that she lived at Kabete/Kabete/T48. The Ruiru property was said to comprise of rental houses, and the rental income was collected by the administrators.

8. It would appear that the deceased had settled his three families in separate parcels of land. At distribution each one of them ought to retain the parcels allotted to them by the deceased. The first house should get Kabete/Kabete/T48; the second house should take Gilgil/Karunga Block 4/ 189, while the third house should take Gilgil/Karunga Block 2/688. It would appear that the Ruiru property, Ruiru/Ruiru West Block 1/1917, had not been allocated to anyone in particular. It should therefore be available to all.

9. In the end I shall resolve the application dated 11th March 2013 in the following terms:

(a) That Kabete/Kabete/T48 shall devolve upon the first house, to be shared equally between Hannah Nyakarura, Lucy Njambi and Priscilla Wanjiku Kahiro;

(b) That Gilgil/Karunga Block 4/ 189 shall devolve upon the second house, to Margaret Wanjiku Gachugia during life interest, and thereafter to Njuguna Gachugia, Lucy Wanjiru Mungai and Njoki Gachugia in equal shares;

(c) That Gilgil/Karunga Block 2/688 shall devolve upon the third house, to Esther Nungari Gachugia during life interest, and to John Njoroge, Nancy Wangui Mungai, Hannah Nyakarura, Nancy Gathoni, James Chege, Joan Wanjiku and Sarah Wakanyi in equal shares;

(d) That Ruiru/Ruiru West Block 1/1917 shall be sold and the proceeds of sale be shared equally between Hannah Nyakarura, Lucy Njambi, Priscilla Wanjiku Kahiro, Margaret Wanjiku Gachugia, Njuguna Gachugia, Lucy Wanjiru Mungai and Njoki Gachugia, Esther Nungari Gachugia John Njoroge, Nancy Wangui Mungai, Hannah Nyakarura, Nancy Gathoni, James Chege, Joan Wanjiku and Sarah Wakanyi;

(e) That the grant on record shall be confirmed and a certificate of confirmation of grant shall issue in the terms set out above;

(f) That as none of the assets are situated within Nairobi and the ancestral home of the family appears to be at Kabete within Kiambu County, the cause herein shall accordingly be transferred to the High Court of Kenya at Kiambu for disposal of any pending business; and

(g) That the costs of the application to be borne by the administrators.

DATED and SIGNED at NAIROBI this 3RD DAY OF MAY, 2017.

W. MUSYOKA

JUDGE

DELIVERED and SIGNED this 5TH DAY OF MAY, 2017.

M. MUIGAI

JUDGE