



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

SUCCESSION CAUSE NO. 2721 OF 2012

IN THE MATTER OF THE ESTATE OF PRISCILLA WANJIKU NJOROGE (DECEASED)

RULING

1. The deceased herein died on 5th May 2012. The Chief of Kinoo Location confirms by his letter dated 8th May 2013, that the deceased had six children, but three had since died. Those who survived the deceased are listed as Daniel Njoroge Mathai, Lona Wanjiru Kagonya, Esther Waithera Kuria, Jane Wairimu Mungai and Ann Wangechi Kelly. Those who have since died are Peter Kimani Mwaura, Doris Wanjiru Wanjiku and Joyce Njeri Karanja. Peter Kimani Mwaura was not survived by either spouse or children, while Doris Wanjiru Wanjiku and Joyce Njeri Karanja were survived by children.
2. Representation was sought in the cause by the surviving children, Daniel Njoroge Mathai, Lona Wanjiru Kagonya and Jane Wairimu Mungai. The deceased is expressed to have been survived by five children, that is Daniel Njoroge Mathai, Lona Wanjiru Kagonya, Esther Waithera Kuria, Jane Wairimu Mungai and Ann Wangechi Kelly. She is expressed to have died possessed of Dagoretti/Kinoo/T246, LR No. Nairobi Block 115/122 and Karagita Share Certificate No. [Particulars withheld]. A grant of letters of administration intestate was accordingly issued to the petitioners on 6th August 2013.
3. What I have to determine is the summons for confirmation of grant dated 3rd February 2016, brought at the instance of the joint administrators. It proposes that the only asset of the estate remaining be shared out between Daniel Njoroge Mathai, Lona Wanjiru Kagonya, Esther Waithera Kuria, Jane Wairimu Mungai and Ann Wangechi Kelly.
4. There is a response to the application by Jane Wairimu Mungai, Esther Waithera Kuria, Lona Wanjiru Kagonya and Anna Wangechi Kelly. They swore a joint affidavit on 18th March 2016. They contend that the proposed mode of distribution was neither fair nor equitable, and it had left out two grandchildren of the deceased, being Boniface Kimani Karanja and Catherine Wanjiku. They propose that the remaining asset be sold and the proceeds therefrom shared equally amongst all the survivors.
5. To that affidavit Daniel Njoroge Mathai swore an affidavit in reply. He avers that only one of the assets is being proposed for distribution. He explains that LR No. Nairobi Block 115/122 is not available for distribution for it is subject to litigation in Nairobi ELC 1052 OF 2015, the process of recovery of the property the subject of Karagita Share Certificate No. 2176 is still ongoing, while the money in the bank account of the deceased was withdrawn on the date of her death and there is a pending criminal matter over the same. He argues that it was malicious to include the names of the grandchildren in the matter for the interests of the deceased daughters of the deceased had been taken care of.
6. There are two other affidavits by Catherine Wanjiku Wanjiru and Laban Karanja, both sworn on 6th July 2016. Catherine Wanjiku Wanjiru is a daughter of the daughter of the deceased called Doris Wanjiru Wanjiku. She states that she and her sister Joan Njoki Ndeche are entitled to the share that was due to

their mother. Laban Karanja the widower of the late daughter of the deceased called Joyce Njoki Mwaura. He would like his wife's interest protected on behalf of her children.

7. A consent was recorded on 11th July 2016 where Wanjiku Wanjiru and Laban Karanja were admitted into the record as beneficiaries of the estate of the deceased. It was also agreed that the estate of the deceased be disposed of by way of written submissions.

8. There has been compliance with the direction to file written submissions, for written submissions have been placed on record on behalf of the parties. I have perused through the said written submissions and noted the arguments advanced in them.

9. There is no dispute with regard to who the survivors of the deceased are. It also appears to be agreed that at this stage only one asset is available for distribution, that is to say Dagoretti/Kinoo/T246. The rest are not available, and their distribution can be revisited after the court cases are concluded.

10. The deceased was survived by children but no spouse. Her intestate estate therefore falls for distribution in terms of section 38 of the Act, which requires that the estate be shared equally amongst all the children. Section 41 of the Act is also relevant for some of the children of the deceased are dead but were survived by their own children.

11. In the end I shall resolve the application dated 3rd February 2016 in the following terms:

(a) That Dagoretti/Kinoo/T246 shall be sold and the proceeds of sale shall thereafter be shared out equally between Daniel Njoroge Mathai, Lona Wanjiru Kagonya, Jane Wairimu Mungai, Catherine Wanjiku Wanjiru and Laban Karanja;

(b) That the share going to Catherine Wanjiku Wanjiru shall be shared equally between the said Catherine Wanjiku Wanjiru and her sister Joan Njoki Ndeche ;

(c) That the share going to Laban Karanja shall be shared equally between the children of the late Joyce Njoki Mwaura, that is to say Julius Mwaura Karanja, Nancy Nyambura Karanja and Boniface Kimani Karanja;

(d) That the grant on record shall be confirmed and a certificate of confirmation of grant shall issue in those terms; and

(e) That there shall be no order as to costs.

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