



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYERI

HIGH COURT SUCCESSION CAUSE NO. 239 OF 2009

**IN THE MATTER OF THE ESTATE OF THEOPHILIO MUGAMBI ALIAS MUGO MUGAMBI
(DECEASED)**

JOYCE WAIRIMU WANGAI.....PETITIONER

VS.

ALBERT KIMARU MUGO

DORCAS WATURI MUGO.....RESPONDENTS

RULING

1.The petition herein for grant of letters of Administration intestate was originally filed by SAMSON WANGAI MUGO who died on the 10th May 2014 before the completion of the administration of the estate of Theophilio Mugo(deceased).

2.By a consent order entered on the 31st October 2016 before justice Mativo the wife to the deceased JOYCE WAIRIMU WANGAI was substituted for him and the grant of letters originally issued to her husband was revoked and joint letters of administration issued to Albert Kimaru Mugo and Joyce Wairimu Wangai.

3.This matter originated from SRM'S COURT KARATINA as Succession Cause no. 15 of 1999. It was transferred to this court by an order dated 28th January 2009. Prior to the transfer Albert Kimaru Mugo had filed an Affidavit of protest dated 5th January 2008, against the Summons for confirmation of grant dated 18th October 2007 filed by Samson Wangai Mugo.

4. In the consent order of 31st October 2016 parties had agreed to fix a date in the registry for the hearing of the summons for confirmation of grant.

5. On the 5th December 2016 the representatives from the firm of PM Kahiga for the applicants and Wahome Gikonyo for the respondents fixed the matter for hearing on the 2nd March 2017.

6. On that date counsel for the respondents was absent and a Mr. Muchiri held his brief. He sought an adjournment which was vigorously opposed by Mr. Kahiga. Upon hearing both counsel, Mr. Kahiga was conciliatory to an adjournment subject to the respondents paying the costs and getting a near date. The matter was adjourned with costs to the applicants and the date of 10th April 2017 on agreed to for hearing of the Summons dated 18th October 2007.

7. On 10th April 2017, there was no appearance for the protesters nor their counsel. The matter was set aside and at 11:35am called again. Neither the protesters nor their counsel were present.

8. Mr. Kahiga submitted that in the absence of the protesters and their counsel the protest dated 5th January 2008 be dismissed and the grant be confirmed in terms of the summons dated 18th October 2007.

9. I have perused the file and confirmed that the joint grant of letters Administration intestate were issued on the 31st October 2016 to Albert Kimaru Mugo and Joyce Wangai Wairimu.

10. The summons for confirmation of grant identified the deceased beneficiaries as;

- i. Samson Wangai Mugo (Son) (now substituted by the wife Joyce Wairimu Wangai)
- ii. Albert Kimaru Mugo (Son)
- iii. Dorcas Waturi Mugo (Wife)

11. Here below is a tabulated comparison of the rival proposed modes of distribution.

| NAME OF PROPERTY | PROPOSED DISTRIBUTION BY SAMSON WANGAI MUGO | PROPOSED DISTRIBUTION BY ALBERT KIMARU MUGO |
|---|--|--|
| LR NAROMORU/NAROMORU BLOCK 2/AGUTHI/594 | SAMSON WANGAI MUGO ABSOLUTELY | SAMSON WANGAI MUGO ABSOLUTELY |
| MUHITO/MBUINI/168 | | DORCAS WATURI MUGO ABSOLUTELY |
| PLOT 3 GITHAGARA MARKET | | EQUAL SHARES ALBERT KIMARU MUGO and PETER MUGO WANGAI |
| ½ SHARE PLOT 4 GITHAGARA MARKET | | ALBERT KIMARU MUGO ABSOLUTELY |
| 1/6 SHARE PLOT 46 GAKINDU MARKET | TO BE SHARED EQUALLY BETWEEN SAMSON WANGAI MUGO AND ALBERT KIMARU MUGO | ALBERT KIMARU MUGO ABSOLUTELY |
| RUARA/NDIAINI KIAMBI CO LTD SHARES | | DORCAS WATURI MUGO ABSOLUTELY |
| LORIEN RANCHING CO. LTD SHARES | | SAMSON WANGAI MUGO ALBERT KIMARU MUGO EQUAL SHARES |

12. The nature of succession causes is that they involve family members who despite the fights in court over the deceased's estate, their familial ties remain.

I have set out a comparison of what the petitioner wanted and what the protesters wanted, because despite the absence of the protesters I am enjoined by the law to be satisfied as to the justice of the case before I

make any orders. Hence I cannot ignore the

Section 71 of the Law of succession act provides for the application by the holder of a grant of to the court for confirmation of the grant in order to empower the **distribution** of any capital assets.

Provided that, in cases of intestacy, the grant of letters of administration **shall not be confirmed until the court is satisfied as to the respective identities and shares of all persons beneficially entitled;** and when confirmed such grant shall specify all such persons and their respective shares.

13.The petitioner's proposal completely disinherits his mother the widow of the deceased. There is no provision for her despite her being a beneficiary of the estate. No explanation is given for this in the supporting affidavit.

14.In contrast the protesters make provision for the widow.

15. The petitioner also gave himself one parcel of land by himself and chose to share the rest equally with the 1st protester. There appears to be no explanation for that mode of distribution. From the affidavit of protest, the protesters appear not to have any issue with the petitioner getting that parcel of land by himself for as long as the other beneficiaries also get individual portions of the estate of the deceased.

16. The record shows that at some point the parties attempted an out of court settlement but did not come up with a consent. The ground has slightly shifted as the petitioner passed away and was substituted by his wife.

17. Taking into consideration the fact demonstrated above, the failure by the petitioner to provide for one of the beneficiaries, I find that the summons for confirmation of grant dated 18th October 2007 does not satisfy the provisions of section 71 of the Law of Succession Act.

18. in the exercise of the inherent powers conferred by rule 73 of the P&A rules to make orders for the ends of justice, and to prevent the abuse of the court process, the confirmation of the grant is postponed until the petitioner is able to explain the failure to provide for the widow of the deceased.

19. The petitioner to file a supplementary affidavit to explain that position within 30 days hereof.

20. The Petitioner to fix a date within 30 days.

Dated, Signed and delivered in open court this 3rd Day of May 2017 at Nyeri

TERESIA MATHEKA

JUDGE

Court assistant Teresia

Right of appeal 30 days

Teresia Matheka

Judge