



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

SUCCESSION CAUSE NO. 1781 OF 2001

IN THE MATTER OF THE ESTATE OF NAOMI WANJIKU MWANGI (DECEASED)

JUDGMENT

1. For determination is the summons for confirmation of grant dated 21st September 2012. It seeks confirmation of the grant made herein on 24th September 2004 to Mercy Wangui Kimaru. The deceased is said to have been survived by three individuals, Mercy Wangui Kimaru, Naomi Wanjiku and Joseph Kimori. She is said to have died possessed of four assets, Development Plot No. 2802 (Dandora), Loc 17/Iganjo/1871, Ofafa 1 House No. 42 and money in a savings account with Post Bank. It is proposed that Mercy Wangui Kimaru takes Development Plot No. 2802 (Dandora), Naomi Wanjiku Loc 17/Iganjo/1871 and Joseph Kimori Ofafa 1 House No. 42. The money is to be shared equally amongst the survivors.

2. Joseph Kimori has sworn an affidavit on 18th February 2013. He asserts that of the three landed assets, only Development Plot No. 2802 (Dandora) and Loc 17/Iganjo/1871 form part of the estate, for Ofafa 1 House No. 42 is property belonging to the Nairobi City County. He is silent on the money in the bank. He proposes that the two assets that he claims form part of the estate of the deceased be sold and the proceeds of sale divided equally between the parties.

3. To that affidavit the applicant replied by hers sworn on 24th September 2013. She alleges that Development Plot No. 2802 (Dandora) was her matrimonial home for that is where the deceased left her when she died. She states that the sale of the matrimonial home would be prejudicial to her and Naomi Wanjiku. She appears to concede that Ofafa 1 House No. 42 belongs to the Nairobi City County.

4. The application was disposed of orally. The applicant testified first. She is a widow of the deceased, in a customary woman-to-woman arrangement, while Naomi Wanjiku is her daughter and the respondent her brother in law. She conceded that the Maringo house belonged to the County government, the deceased and her daughter used to live there prior to moving to the Dandora property, leaving the respondent there. She collects rent from the Dandora property. She added that no one lived on the Iganjo property save for a farmhand, but she stated that she used to till the land. Naomi Wanjiku testified next. She said that she lived on the Dandora property with the applicant, asserting that that was where she was born. She proposed that the Iganjo property ought to be shared out equally between the three of them, while the Dandora property should be given to her.

5. On his part the respondent testified that the Dandora property ought to be sold as the applicant and her daughter have not be giving him a share of the rents they collect. He proposed that the Iganjo property be sold too and proceeds shared equally. He stated that there was no money in the Post Bank account and the Maringo house belonged to the county government. He claimed that the applicant never lived with the deceased in Nairobi; instead she and her daughter were at the farm at Iganjo until the deceased died, when they moved into the Dandora property.

6. The deceased died intestate in 2001. A will that was said to have been made by her on 5th April 2001 was invalidated by this court in a decision rendered on 24th September 2004. That then meant that she died intestate. As she died after the Law of Succession Act, Cap 160, Laws of Kenya, had come into force, her estate fell for distribution in terms of Part V of the Act. According to the intestacy provisions in Part V, the surviving widow of the deceased is given priority, and indeed has been said to be the person with the greatest stake in the estate. The surviving spouse is followed by the surviving children. Other relatives are only entitled where the deceased was not survived by a spouse and or children.

7. The deceased in this matter was survived by a spouse. She should be given priority over everybody else. The spouse has a child. The other claimant is a brother of the deceased. In the scheme of things set out in section 39 of the Law of Succession Act he ranks quite very low in the hierarchy. The court should ensure that the widow and daughter of the deceased are catered for before it addresses the case of her brother. I note that the court did recognize him as a beneficiary in the decision of 24th September 2004. That decision, however, did not put him at par with the widow and daughter of the deceased, for the Act gives them a much higher ranking than him in the scheme of things. These are matters that I shall take into account in distribution.

8. From the material before me, it is plain that the Maringo property does not form part of the estate of the deceased, and therefore the same is not available for distribution. It is certain that the Dandora and Iganjo properties belonged to the deceased and are therefore available for distribution. The deceased had a bank account with Post Bank. The current status of that account is unknown; although the respondent claims that there was no money in the account no documentary proof has been provided. The applicant and her daughter claim that the Dandora property was their home since the days of the deceased's lifetime. That is contested by the respondent. It is common ground, however, that that is where they are currently residing. The Iganjo property is said to be unutilized for now by any of the parties. The parties have not attached any values to the assets, but it would appear that the Dandora property is the most valuable.

9. After taking everything into account, I shall dispose of the application dated 21st September 2012 in the following terms:

(a) that as per the ruling of Koome J. delivered on 24th September 2004, I hereby declare the deceased to have been survived by Mercy Wangui Kimaru, Naomi Wanjiku and Joseph Kimori;

(b) that I declare the assets available for distribution to be Development Plot No. 2802 (Dandora), Loc 17/Iganjo/1871, and money in savings account with Post Bank;

(c) that the said assets shall be distributed as follows:

(i) Development Plot No. 2802 (Dandora) – to Mercy Wangui Kimaru and Naomi Wanjiku, equally,

(ii) Loc 17/Iganjo/1871 – to Joseph Kimori, absolutely; and

(iii) money in savings account with Post Bank – to Mercy Wangui Kimaru, Naomi Wanjiku and Joseph Kimori, equally;

(d) that the grant of letters of administration intestate made herein on 24th September 2004 to Mercy Wangui Kimaru and Joseph Kimori is hereby confirmed in those terms;

(e) that a certificate of confirmation of grant shall issue accordingly; and

(f) that each party shall bear their own costs.

DATED, SIGNED and DELIVERED at NAIROBI THIS 9TH DAY OF JUNE, 2017.

W. MUSYOKA

JUDGE