



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI LAW COURTS
FAMILY DIVISION
SUCCESSION CAUSE NO. 582 OF 2015
IN THE MATTER OF THE ESTATE OF
GILBERT NYAMBEGERA MOMANYI - (DECEASED)

JANET NDUNGE KINGELU.....1ST PETITIONER

WINNIE KERUBO NYAMBEGERA.....2ND PETITIONER

INNOCENT DEKOK NYAMBEGERA.....3RD PETITIONER

VERSUS

ALICE NGOGE TINEGA.....1ST OBJECTOR

NYACHIO NYAMBEGERA.....2ND OBJECTOR

ROBERT MOMIGI MOMANYI.....3RD OBJECTOR

AND

ALICE TINEGA..... 1ST CROSS-PETITIONER

CATHERINE WANJIKU MWANGI.....2ND CROSS-PETITIONER

CAROLINE MOGAKA.....3RD CROSS-PETITIONER

DIRECTIONS

1. The deceased Gilbert Nyambegera Momanyi died intestate on 12th January 2015. He left property which included residential property on LR No. 209/8294/222 South C, residential property on Plot No. 209/11095/220 South C, LR No. Nairobi/Block 79/303 at BuruBuru Phase V, LR No. Nairobi/Block 82/4703 Donholm Harambee Sacco, LR No. 82/2703 (Plot No. 4836) at Donholm Harambee Sacco and rental residential property on Plot No. A835.

2. On 11th March 2015 his widow Janet Ndunge Kingelu, daughter Winnie Kerubo and one Innocent

Dekok Nyambegera petitioned this court for the grant of joint letters of administration intestate. The petition indicated that the other children of the deceased were Edgar Onyoka Nyambegera, Shanice Mwendu Nyambegera, Samuel Nzyoka Nyambegera and Nehemiah Tinega Nyambegera.

3. On 15th April 2015 Alice Ngoge Tinega (1st objector), Nyachio Nyambegera (2nd objector) and Robert Momigi Momanyi (3rd objector) filed a notice of objection to the petition. The 1st objector indicated that he was the first wife of the deceased, the 2nd objector was the uncle of the deceased and the 3rd objector was the brother of the deceased. The 1st objector stated that he was the biological mother of the 2nd and 3rd petitioner and also the mother of Edgar Onyoka Nyambegera and Michelle Nyatichi Nyambegera.

4. On 10th April 2015 the petitioners filed application for letters of administration ad *colligenda bona* and asked that they be allowed to collect rent from all tenants and deposit the same into Barclays Bank A/C No. 3827075 for safe keeping. On 1st March 2015 they applied to be allowed to withdraw Kh.600,000/= from the deceased's accounts at Barclays Bank A/C NO. 3827075, HFCK A/C No. 00200007417 and Safaricom Mpesa A/C No. 0713884995, and that the amount be released to their advocates Miller & Co. Advocates. The notice of objection was filed through T.O. Nyangau, Kemunto & Co. Advocate.

5. On 4th May 2015 the objectors filed a motion in which they complained that the petitioners had filed this petition without their knowledge or consent. They stated that the deceased had left, in all, four widows, the 1st petitioner being the last one. Lastly, they complained that the 1st petitioner was seeking to defraud the estate of its funds. The petitioners filed a notice of preliminary objection to the motion. While that was pending, Catherine Mwangi filed an affidavit to support the motion. She stated that she was the second wife of the deceased who had two other wives who were the 1st objector and the 1st petitioner. She stated that the 1st petitioner had short-changed them by filing this petition without their knowledge. On 9th June 2015 Caroline Mogaka filed an affidavit to say that she was the 3rd wife of the deceased with whom she had two children, namely Daniella Moyaba (aged 6) and Sam Momanyi (aged 4). She made a claim to the estate and complained that the 1st petitioner had filed the petition without reference to them.

6. On 26th June 2015 Alice Tinega, Catherine Mwangi and Caroline Mogaka filed a motion through T.O. Nyangai, Kemunto & Co. Advocates seeking to have the petition nullified and a fresh one ordered to be filed that included all beneficiaries and all the assets of the estate. They claimed that since the petition was filed by one wife to the exclusion of the others it was null and void. The 1st petitioner opposed the motion by way of grounds of opposition, saying, among other things, that the application was misconceived, mischievous and an abuse of the process of court.

7. On 13th November 2015 the 1st petitioner filed an application seeking that interim financial provision be made for the children of the deceased towards their education and maintenance.

8. On 7th December 2015 Alice Tinega, Catherine Wanjiku Mwangi and Caroline Mogaka filed a petition by way of cross application for a grant in the estate of the deceased. In the supporting affidavits the family of the deceased was shown as follows:-

(a) 1st wife Alice Ngoge Tinega

Children

(i) Winnie Kerubo Nyambegera

(ii) Innocent Dekok Nyambegera

(iii) Edgar Onyoka Nyambegera

(iv) Mitchelle Nyatichi Nyambegera

(b) 2nd wife – Catherine Wanjiku Mwangi

(c) 3rd wife – Caroline Khamaly Mogaka

Children

(i) Daniella Asher Moyaba

(ii) Sam Gad Momanyi

(d) 4th wife – Janet Ndunge

Children

(i) Shanice Nyambegera

(ii) Samuel Nzioka Nyambegera

(iii) Nehemiah Tinega Nyambegera

It was stated that Caroline Khamaly Mogaka occupies residential house No. 836 in Donholm, Alice Tinega occupies residential house No. 835 at Donholm, Catherine occupies residential house No. 609 at Donholm and that residential house No. 209/11095/220 at South C is occupied by the 1st petitioner. All these were some of the properties of the deceased, it was said. The cross-petition was filed by Julius Nyakiangana & Co. Advocates. Regarding the pending application for the provision of the education and maintenance of the children, it was deponed that the matter was premature, and that, if granted, it would amount to the distribution of the assets of the deceased at this stage.

9. On 23rd September 2015 it was directed that the following were the issues for determination:-

(a) how many wives the deceased had;

(b) who are the children of the deceased;

(c) what properties comprised the estate of the deceased;

(d) who are the beneficiaries of the deceased; and

(e) whether the deceased had any dependants.

The petitioners were asked to file affidavits within 7 days to answer the questions and the respondents to file their affidavits in 7 days upon service. Lastly, the parties were asked to file written submissions within 7 days on the interim order for maintenance and education of the children.

10. It is clear that at the time of the directions the cross-petition had not been filed. Now there are two petitions, as it were, on record. The cross petitioners have to be heard before fresh directions are given. The issue of education and maintenance of the children will await such directions. Lastly, given the length of time this matter is taking, and the multiple applications that are being filed, the court has to, as a matter of priority, determine who will get grant of letters of administration intestate to be able to manage the estate of the deceased so that there is no wastage or intermeddling.

SIGNED and DELIVERED at NAIROBI on the 8th day of NOVEMBER 2016.

A.O. MUCHELULE

JUDGE