



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
SUCCESSION CAUSE NO. 2776 OF 1995
IN THE ESTATE OF NGUGI MUHIA (DECEASED)

ELIZABETH WANJIKU NDUNGU APPLICANT

V E R S U S

PETER KAMITI NGUGI1ST RESPONDENT

STEPHEN NATHANIEL MWAURA 2ND RESPONDENT

RULING

1. The application dated 9th September 2011 is for confirmation of the grant made on 12th July 2010.
2. The matter relates to the estate of Ngugi Muhia who died intestate on 31st July 1992. He was a polygamist having married three times to Rebecca Nduta Ngugi, Sarah Muthoni Ngugi and Phillis Njoki Ngugi. The three wives begot sixteen (16) children. As at the time of his demise only two (2) of the wives were alive – Sarah Muthoni Ngugi and Phillis Njoki – as Rebecca Nduta Ngugi had died in 1994. Of the sixteen children, three were dead – Dorcas Wanjiku, James Mwaura and Lucy Wanjiru – but were survived by their own children.
3. Representation to the estate of the deceased was granted on 26th February 1996 to the surviving widows – Phillis Njoki Ngugi and Sarah Muthoni Ngugi. The said grant was confirmed on 8th November 1999.
4. The grant made on 26th February 1996 was revoked by implication on 12th July 2010 when, by consent of the parties, three new administrators were appointed and it was ordered that a fresh grant of letters of administration intestate issue to the new administrators. The administrators appointed on 12th July 2010 were Peter Kamiti Ngugi, Stephen Mwaura Ngugi and Elizabeth Wanjiru Ngugi. There was a further order that the new administrators proceed to file an application for confirmation of grant, whether jointly or separately.
5. On 17th March 2004 it was brought to the attention of the court that the administrator, Peter Kamiti Ngugi, and the surviving widow, Phillis Njoki Ngugi, had passed on. An order was made on that date for the substitution of Peter Kamiti Ngugi as administrator with David Kimunyu Ngugi.
6. The background set out above is the backdrop against which the summons for confirmation dated 9th September 2011 was filed.

7. The summons dated 9th September 2011 is at the instance of only one of the administrators, the other two are named as respondents. The applicant does not identify the survivors of the deceased, but what I have gleaned from the record is that the wives/widows of the deceased are all dead. This then means that the persons entitled to a share in the estate are the sixteen children or their survivors. It is clear from the record that there is no dispute at all on who is entitled to a share in the estate.
8. The applicant has not drawn a list in the summons of the assets available for distribution. The property that she has proposed for distribution is as follows:-
 - a. Chania/Kanyoni/1372
 - b. Chania/Kanyoni/811
 - c. Chania/Kanyoni/794
 - d. Chania/Kanyoni/795
 - e. Chania/Kanyoni/796
 - f. Chania/Kanyoni/800
 - g. Chania/Kanyoni/643/22
 - h. Makuyu/Makuyu Block II/1076
 - i. Makuyu/Makuyu Block II/923
 - j. Ndundori/Muguathe/Block 2/1528
 - k. Duka Municipality LR No. SSS4/343
 - l. Halfshare in Kyanjau Farming Coop. Society Ltd,
 - m. Cash in A/C No. **[particulars withheld]** in KCB Thika Branch
 - n. Proceeds of Alico Kenya Ltd Insurance Policy Number **[particulars withheld]** of the late Andrew Kamititi Ngugi
 - o. Shares in KPCU
 - p. Shares in ICDC
9. The distribution of the said assets is set out in paragraph 18 of the affidavit of the applicant sworn on 9th September 2011.
10. The administrator, Peter Kamiti Ngugi, now deceased swore an affidavit in reply on 31st October 2011. He agreed in principle with the proposed distribution, but was not agreeable to some of the proposals.
11. He agreed with the distribution proposed in paragraph 18(a)(i), 18(a)(ii), 18(a)(iii), 18(a)(iv), 18(b), 18(e), 18(j), 18(l), 18(h) and 18(o) of the affidavit of the applicant.
12. He disagreed with the proposals in the following paragraphs for the reasons given:-
 - a. 18(a)(v) – the family of Phillis Njoki Ngugi was said to have had developed a coffee factory on the portion and that ought to be taken into account;
 - b. 18(c) – the deceased is alleged to have had indicated that the property should go to Reuben Kabugi Ngugi and Joseph Gitau Ngugi;
 - c. 18(d) – It was proposed that Chania/Kanyoni/795 should be given to Peter Kamiti Ngugi and Chania/Kanyoni/796 to David Kimunyu Ngugi;
 - d. 18(f) and (g) – the surviving widow should take both Chania/Kanyoni/643/22 and income therefrom;
 - e. 18(h) – parcel should be given to David Kimunyu Ngugi and Phillis Mwelu Makau;
 - f. 18(i) – Kamau Kuria Karuru was not a survivor of the deceased, and therefore Ndundori/Muguathe/Block 2/1528 should be sold and the proceeds distributed equally amongst the three houses;

- g. 18(k) – was not clear the property it refers to;
 - h. 18(m) – the insurance policy in question did not relate to the estate of the deceased and;
 - i. 18(p) – the share in Kyanjau Farmers Coop Society – being plots 425, 1644 and 562 to go to Elizabeth Wanjiku Ndungu, Peter Kamiri Ngugi and David Kimunyu Ngugi and Reuben Kabugi Ngugi respectively.
13. He further pointed out the property known as Chania/Mwahota/Ikai was not listed among the assets proposed by applicant for distribution, and the same ought to be included and given to Joseph Gitau Ngugi.
14. The applicant replied to the issues raised by the first respondent in his affidavit of 10th February 2012. She rejects the proposals made in paragraphs 9 (q) of the affidavit of the first respondent, but concedes Chania/Mwahota/Ikai exists and should be shared equally among the beneficiaries.
15. There is another affidavit on record sworn on 14th March 2014 by a beneficiary named Esther Wandia Ngugi.
16. In response to the proposals in the application, the said beneficiary agrees with the proposals in paragraphs 18(a)(ii), 18(a)(iii), 18(a)(v), 18(a)(vi), 18(c), 18(d), 18(f), 18(g), 18(h), 18(i), 18(m), 18(n), 18(o).
17. She does not agree with the proposals in the following paragraphs for the reasons assigned in her affidavit:-
- a. 18(a)(ii) – the share going to her mother’s house, Sarah Muthoni Ngugi, should be shared equally among the children in that house except Dorcas Wanjiku Mburu, Fiona Wanjiru Mwai and Sarah Muthoni Kamiti. No reasons have been given for their exclusion;
 - b. 18(a)(iv) – the share given to Stephen Mwaura should be defined and limited to one (1) acre, the rest to be distributed equally among the children excluding Dorcas Wanjiku Mburu, Fiona Wanjiru Mwai and Sarah Muthoni Kamiti;
 - c. 18(b) – one share to Peter Kamiti Ngugi and the other share to either Peninah Nyambura Murphy or Zipporah Mumbi as Stephen Mwaura has already gotten a plot with a shop at Kamwangi Shopping Centre;
 - (cc) 18(a) – name of Fiona Wanjiru Mwai to be excluded;
 - d. 18(j) – to be shared equally among the children in the house of Sarah Muthoni Ngugi, excluding Dorcas Wanjiku Mburu, Fiona Wanjiru Mwai and Sarah Muthoni Kamiti;
 - e. 18(k) – to be shared equally to the children in the house of Sarah Muthoni Ngugi, excluding Dorcas Wanjiku Mburu, Fiona Wanjiru Mwai and Sarah Muthoni Kamiti;
 - f. 18(l) – to be shared equally to the children in the house of Sarah Muthoni Ngugi, excluding Dorcas Wanjiku Mburu, Fiona Wanjiru Mwai and Sarah Muthoni Kamiti;
 - g. 18(l) – to be shared equally among the three houses; and
 - h. 18(p) – to be shared equally among the three houses.
18. It was directed on 25th January 2012 that the application for confirmation of the grant be disposed of by way of written submissions. The record before me has written submissions by the applicant dated 29th February 2012 filed on 29th February 2004, submissions by the 1st respondent dated

16th October 2012 and filed on 17th October 2012 and submissions by the beneficiary Esther Wandia Ngugi dated 1st October 2014 and filed herein on 1st October 2014. I have gone through both sets of the submissions and noted the points of law raised in all of them.

19. The parties through counsel also addressed me orally on 7th October 2014.

20. The deceased was a polygamist. Devolution of the intestate estate of a polygamist is governed by Section 40 of the Law of Succession Act. The essence of the said provision is equal distribution of the estate among the children of the deceased, taking into account the houses they belong to and surviving spouses, if any.

21. I note from the record that some of the proposals by the applicant have been approved by the first respondent and the beneficiary. I do not have in my record any response to the applicant's proposals by the second respondent. I am also cognizant of the fact that the deceased passed on in 1992, and the survivors of the deceased have been settled on some of the assets since then. The proposals presented before me no doubt take into account the position on the ground on some of the assets.

22. Taking into account what I have stated in paragraphs 20 and 21 above, I do hereby order distribution of the estate of the deceased in the following terms:-

a. **Parcel Chania/Kanyoni/1372 shall be distributed as follows:-**

i. **Stephen Mwaura Ngugi shall take a portion thereof equivalent to one (1) acre being the *inter vivos* allocation made to him by the deceased;**

ii. **The balance of the property to be shared by the three houses according to the portions shown to the three deceased wives of the deceased during his lifetime, to be shared equally among the children in each house;**

iii. **Elizabeth Wanjiku Ndungu to take the entire portion which is due to her mother, Rebecca Nduta Ngugi (deceased);**

iv. **Peninah Nyambura Murphy, the estate of Dorcas Wanjiku Mburu, Fiona Wanjiku Mwai, Esthere Wandia Ngugi, Zipporah Mumbi Ngugi and Stephen Mwaura Ngugi to take the share due to the house of Sarah Muthoni Ngugi;**

v. **Damaris Wakonyo Mwaura, Rosemary Wanjiku Ngau, David Kimunyu Ngugi, Joseph Gitau Ngugi, Catherine Njoki Wanjiru, Margaret Wachuka Ngugi and Reuben Kabugi Ngugi to take the shares due to the house of Phillis Njoki Ngugi;**

b. **½ share of the deceased in Chania/Kanyoni/811 to the estate of Peter Kamiti Ngugi;**

c. **Chania/Kanyoni/794 to Elizabeth Wanjiku Ndungu;**

d. **Chania/Kanyoni/795 and 796 to the children of Phillis Njoki Ngugi in each shares, with the children of any dead children of the said Njoki Ndungu sharing equally the portion due to their dead parents;**

e. **Chania/Kanyoni/800 to children of Sarah Muthoni Ngugi, with the children of any dead child or children taking equally the share that was due to their dead parents;**

f. **Chania/Kanyoni/643/22 to be sold and the proceeds from the sale to be shared equally among all the children of the deceased;**

g. **Makuyu/Makuyu/Block II/1076 and Makuyu/Makuyu/Block II/923 to the children of Phillis Njoki Ngugi in equal shares, with the share or shares of any dead child or children of the said Phillis Njoki Ngugi devolving upon any surviving child or children of any dead child or children in equal shares;**

- h. It is not explained who Karuru Kuria Karuru is or was in relation to the estate of the deceased, consequently I direct that Ndundori/Muguathe/Block 2/1528 be sold and the proceeds of sale shared equally among all the children of the deceased;
- i. Thika Municipality: LR 5554/343 to Stephen Nathaniel Mwaura;
- j. Money in KCB Thika Branch A/C No. *[particulars withheld]* to Stephen Nathaniel Mwaura;
- k. Shares in KPCU and ICDC to be shared equally amongst the children of the deceased;
- l. Chania/Mwahota/Ikai to be shared equally amongst all the children of the deceased; and
- m. ½ share of the deceased in Kyanjau Farmers Co. Ltd to be sold and the proceeds of sale to be distributed equally amongst all the children of the deceased.

23. The connection between Alico Kenya Ltd Policy Number *[particulars withheld]* in the name of the late Andrew Kamiti Ngugi and the estate of Ngugi Muhia has not been brought out, consequently I shall not treat the said asset as one among those that make up the estate of the deceased.

24. In view of everything that I have said above, I do hereby:-

- a. Confirm Elizabeth Wanjiku Ndungu, Stephen Mwaura Ngugi and David Kimunyu Ngugi as the administrators of the estate of the deceased;
- b. Grant of letters of administration intestate shall issue to them dated 17th March 2014;
- c. The estate of the deceased to be distributed in terms of paragraph 22 hereinabove; and
- d. Costs shall be in the cause.

DATED, SIGNED and DELIVERED at NAIROBI this 10TH DAY OF JULY, 2015.

W. MUSYOKA

JUDGE

In the presence of Mr. Karanja advocate for the applicant.

In the presence of Ms Musyoka advocate for the respondents.

Mr. Kamata for Mr. King'au for Esther Wandia Ngugi.