



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

SUCCESSION CAUSE NO. 1018 OF 2012

IN THE MATTER OF THE ESTATE OF WALLACE BORO NGANGA (DECEASED)

RULING

1. The Citors Eliud Nganga Boro and Catherine Nduta Mbugua, issued Citations on 21st June 2012 to the Citees:-
 - a. **Mary Wairimu Boro**
 - b. **Eliud Nganga**
 - c. **Obadiah Nyutu**
 - d. **Joyce Wangui**
 - e. **Rahab Wanjiru**
 - f. **Esther Wanjiku Gitau**
 - g. **Elizabeth Wanja Kariuki**
 - h. **Zipporah Wangari**
 - i. **Sarah Muthoni**
 - j. **Joseph Karanja**
 - k. **Samuel Ndungu**
2. The Citors by their affidavit dated 12th June 2012, stated that on 1st November 2011 they wrote to the Chief Nyanduma Location to supply them with a letter for purposes of petitioning the court, but he declined to write it stating that all the members of the family must jointly apply. The Respondents declined to apply for the same jointly.
3. The Citors deponed that the Citees have intermeddled with, and taken control of the Estate's assets and are benefiting from the same and wasting the Estate without regard to the Citors.
4. The Citors averred that the Citees have refused to apply for the grant of letters of administration of the Estate of the deceased, in spite of requests to do so. That they have also declined to give their consent to the Citors to apply for the grant. The Citors are the eldest son and daughter of the deceased and they stated that they are desirous of obtaining letters of administration to safeguard the Estate.
5. By their replying affidavit dated 20th September 2012 the Citees denied that the Deceased died on 18th June 2011. They stated that he had died on 19th June 2011 and that he died testate and not intestate as alleged. They also denied that the Deceased left only nine (9) survivors and stated that he had left nineteen (19) survivors and beneficiaries namely;
 - i. **Mary Wairimu Boro,**
 - ii. **Catherine Nduta Mbugua**

- iii. **Margaret Wanjiru Gatukui**
- iv. **Esther Wanjiku Chege**
- v. **Eliud Ng'ang'a Boro**
- vi. **Obadiah Nyutu Boro**
- vii. **Eliud Ng'ang'a Boro**
- viii. **Joyce Wangui Boro**
- ix. **Rahab Wanjiru Boro**
- x. **Esther Wanjiku Boro**
- xi. **Elizabeth Wanja**
- xii. **Zipporah Wangari**
- xiii. **Sarah Muthoni Boro**
- xiv. **Joseph Karanja Boro**
- xv. **Samuel Ndungu Boro**
- xvi. **Mary Wairimu Nduta**
- xvii. **Samuel Muchiri Nduta**
- xviii. **Wallace Boro Nduta**
- xix. **Eliud Ng'ang'a Nduta.**

6. The Citees did not dispute that the Chief of Nyanduma Location declined to issue a letter for purposes of petitioning for the grant. They however denied that they had intermeddled with and taken control of the Estate's assets, or that they are benefitting from the Estate without due regard to the Petitioners or that they are wasting the said Estate.
7. The Citees deponed that they did not decline to petition for a Grant of Letters of Administration, but that they were seeking the services of an Advocate to represent them. They further admitted that the Citors are children of the deceased, but they objected to their wish to apply for a Grant of Letters of Administration.
8. The Citees also filed an affidavit of protest dated 20th September 2012, and deponed that the petition for the Grant of Letters of Administration intestate should not be granted as there exists a Will made by the Deceased. They asserted that the subject matter was not intestate as stated in the citation and that this misdirection may result in an injustice if not rectified at this instant stage.
9. Eliud Ng'ang'a Boro (hereinafter **Eliud**) one of the Citors, by his further affidavit dated 2nd March, 2015 stated that indeed, the deceased had two wives. The first wife Hannah Wakago (**Hannah**), had four children namely; Catherine Nduta Mbugua, Margaret Wanjiru Gatukui, Esther Wanjiru Chege and Eliud Ng'ang'a Boro. The second wife Mary Wairimu Boro (**Mary**), also had children namely; Obadiah Nyutu, Eliud Ng'ang'a, Joyce Wangui, Rahab Wanjiru, Esther Wanjiku Gitau, Elizabeth Wanja Kariuki, Zipporah Wangari, Sarah Muthoni, Joseph Karanja and Samuel Ndungu.
10. Eliud reiterated that the Deceased died intestate, since the Protesters did not annex any supposed Will to their replying affidavit. He contended that the Protesters had incited the Chief of Nyanduma Location against his family which resulted in the Chief refusing to write the letter for petitioning of the grant.
11. He averred that the Protesters have in the intervening period, between filing of their replying affidavit on 25th October 2012 and now, failed to petition for the Grant. That the Protesters are content with the status quo which has enabled them to intermeddle in the Deceased's Estate in a bid to disinherit his side of the family.
12. As an example he referred to Land Ref. No. Block III/456 which he said, yielded about Kshs. 15,000/- per month and which has been in custody of the house of Mary to the exclusion of the house of Hannah. He pointed out that accounts indicating who is the beneficiary of the monthly rental income have not been furnished.

13. Eliud deponed that a posho mill and other maize milling machinery from which he was collecting proceeds immediately after his father's death, were uprooted from Kagwe in Kiambu County and taken elsewhere without their knowledge.
14. He averred that the protestors are in occupation of Land Ref. No. Komothai/Gathugu/1015 measuring approximately 5 acres, with approximately 2 acres thereof under tea bushes, from which Mary derives an income of approximately Kshs. 100,000/- a year. They are also in possession of Land Ref. No. Gatamaiyu/Nyanduma/809 measuring approximately 4 acres.
15. Eliud said that his father also owned plots measuring 1.25 acres in Ruiru, which are unoccupied by any family member from both houses. He also pointed out that the Objectors had failed to comply with the provisions of The Law of Succession Act by failing to give the respective ages of all the beneficiaries of the Deceased.
16. He went further to state that the Deceased was not maintaining any of his children since they were adults, and that the grandchildren referred to namely; **Mary Wairimu Nduta, Samuel Muchiri Nduta, Wallace Boro Nduta** and **Eliud Ng'anga' Nduta** are all adults who are working for gain. He proposed that the grandchildren herein should inherit their parent's share of the Estate as they were not dependants.
17. He confirmed that
18. Hannah was separated from the Deceased before the Deceased passed on, and proposed that a valuation be done on the assets to enable fair distribution of the Estate. He suggested that all the assets of the Estate including those that may be discovered later, be distributed in accordance with the provisions of Law of Succession Act which governs polygamous families.
19. Upon consideration of the cause before me and the law applicable, I find that the Citors have put the cart before the horse by moving prematurely to make proposals as to the distribution of the Estate since no petition has been filed yet. We must therefore deal with the issue of filing of the petition first. In the circumstances I consider it meet to order that:-
- i. **Mary Wairimu Boro and Hannah Wakago, the two widows of the Deceased who have priority of right or the representatives of the two houses as shall be agreed upon, do proceed to petition jointly for grant of probate if they have a Will, or for grant of letters of administration intestate if they do not have a Will, within thirty (30) days hereof.**
 - ii. **Failure to comply with the order in (i) above, the Citors shall be at liberty to petition for Letters of Administration intestate with or without the area Chief's letter.**
 - iii. **The relevant area Chief is hereby directed to provide the necessary assistance required by his office to facilitate the petitioning of grant in this cause.**

It is so ordered.

DATED, SIGNED and DELIVERED at NAIROBI this 15th DAY OF July 2015.

L. ACHODE

JUDGE