



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**SUCCESSION CAUSE NO. 489 OF 2013**

**IN THE MATTER OF THE ESTATE OF FLORENCE NJERI WALLACE (DECEASED)**

**RULING**

1. There are two summonses before this court. The first is dated 28<sup>th</sup> January 2015 and is a summons for confirmation of grant in the Estate of Florence Njeri Wallace who died on 30<sup>th</sup> October 2013. It is brought by Caroline Wanjiru Mbugua (hereafter Caroline), and in it she prays that the name of the Administrator George Mungai Mbugua (now deceased), be substituted with her name. She also prays that the Grant of Letters of Administration issued to the deceased on 13<sup>th</sup> June, 2013, be confirmed and distributed in terms of paragraph 6 of her supporting affidavit as follows:

<b>Properties</b>	<b>Who to inherit</b>	<b>Ha.</b>	
a. Muguga/Jet Scheme/503	George Mungai Mbugua (deceased)		
	John Ngugi Mbugua - son	0.18 Ha	
	Lucy Waithera Mbugua - daughter	0.18 Ha	
	Richard Mugo Mbugua - son	0.18 Ha	
	Samuel Nganga Mbugua - son	0.18 Ha	
	James Kariuki Wallace - son	0.18 Ha	
	Caroline Wanjiru Mbugua - daughter	0.18 Ha	
	Godfrey Nderu Wallace - son	0.18 Ha	
	(b) Limuru-Dairy Co-operative Society Shares (Membership number 1280)	Grace Wambui Mbugua - daughter	Share equally
		Mary Wanjiku Mwangi - daughter	Share equally

She states that six months since 13<sup>th</sup> June, 2013 when the grant was made to George Mungai Mbugua had lapsed.

2. The other summons dated 9<sup>th</sup> March 2015 is brought by John Ngugi Mbugua (hereinafter Ngugi). In it he prays that the Grant of Letters of Administration issued to George Mungai Mbugua (deceased) be rectified and the deceased's name be substituted with his name. Further that Phyllis Nyambura Mungai, the deceased's wife, be included as a beneficiary and that upon rectification, the Grant of Letters of Administration issued on 13<sup>th</sup> June 2013 be confirmed and the Estate be distributed as follows:

<b>Properties</b>	<b>Who to inherit</b>	<b>Ha.</b>
Muguga/Jet Scheme/503	Phyllis Nyambura Mungai daughter-in-law	0.245 Ha
	John Ngugi Mbugua	
	Richard Mugo Mbugua	0.245 Ha
	Samuel Nganga Mbugua	0.245 Ha
	James Kariuki Wallace	0.245 Ha
	Godfrey Nderu Wallace	0.245 Ha
	Grace Wambui Mbugua	0.245 Ha
		0.0950 Ha
	Mary Wanjiku Mwangi - daughter	0.1011 Ha
	Lucy Waithera Ndungu - daughter	jointly
Caroline Wanjiru Mbugua - daughter		

3. The Summons by Ngugi is predicated on grounds that he is the proper person to be appointed the Administrator of the Estate of his late mother, in place of his deceased brother who was the sole Administrator. The reasons he advances are that:

- i. he is the eldest son of the deceased and he together with the other nine (9) beneficiaries live on L.R. No. Muguga/Jet Scheme/503, which is the only property in the Estate and he is able to consult with them before he takes any step in the administration of the Estate.
- ii. his application to be appointed the administrator of the Estate is supported by the nine other (9) beneficiaries, including Caroline.
- iii. the distribution of L.R. No. Muguga/Jet Scheme/503 should be shared out as per the distribution schedule filed in court on 9<sup>th</sup> March 2015 which is supported by eight (8) beneficiaries.
- iv. in the year 1995 the deceased had, on the ground subdivided or caused L.R. No. Muguga/Jet Scheme/503 to be subdivided and each beneficiary shown his/her portion of the land where they live to date. The deceased too had her own portion where she lived with her two daughters, including Caroline Wanjiru Mbugua.
- v. after their mother's demise, the four daughters inherited the deceased's portion in which the three

married daughters took 0.1011 Ha, while Grace Wambui Mbugua who is not married got 0.0950 Ha.

4. On 13<sup>th</sup> March 2015 Ngugi filed an affidavit of Protest to Caroline's Summons for confirmation of grant. In the said affidavit he depones that he is the proposed Administrator of the Estate of the deceased as well as a beneficiary. That the distribution of the Estate proposed by Caroline is not in accordance with the wishes of the deceased, since the Estate had already been subdivided in the year 1995 as indicated in the Surveyor's Report dated 2<sup>nd</sup> September 1995.

5. Ngugi avers that his mode of distribution is in accordance with the wishes of the deceased and the Surveyor's Report. He further depones that Caroline is in agreement with his proposed mode of distribution of the Estate of the deceased because, she together with the two sisters, Lucy Waithira Ndung'u and Mary Wanjiku Mwangi have already disposed of the share allocated to them jointly to one Nahashon Waweru Kamau. He annexed a sale agreement dated 1<sup>st</sup> October 2014 to the Affidavit of Protest.

6. Caroline filed a further affidavit and deponed that Ngugi and her other brothers have already intermeddled with the Estate of the deceased by transferring Limuru Dairy Farmers Co. Ltd to her sister Grace Wambui Mbugua without her consent as a beneficiary or the authority of the court. That the distribution of the Estate in accordance with the wishes of the deceased marked as 'JMN' is unknown to her, and is only signed by the six brothers. She further avers that there is no consent of the Land Control Board and a copy of the application for consent for the purported sub-division, which should have been signed by her late mother who was alive by then.

7. She further depones that there is no explanation as to why she and her two sisters should share 0.1011 hectares. That when she and her two sisters entered into an agreement with one Nahashon Waweru Kamau to sell him their share, it was with the understanding that at the time of distribution she would get an equal share of the land less one third of the portion sold. She avers that she is the one who built a house for their mother using her own funds, which house is currently occupied by Grace Wambui Mbugua, who is also the owner of the Dairy Company shares. She complains that some of the beneficiaries are building on various parts of the land before confirmation of the grant and distribution of the Estate.

8. In reply to Caroline's further affidavit, Ngugi also filed a further affidavit and depones that the value of the shares of Limuru Dairy Farmers Co. Ltd given to their sister, Grace Wambui Mbugua is only Kshs.250/= per annum in form of annual dividend/Bonus. Ngugi asserts that he does not know why the deceased summoned only the sons during the distribution of L.R. No. Muguga Jet Scheme/503 on 2<sup>nd</sup> September 1995 and left out the daughters. That the document marked as 'JNM:1' is not a Mutation but a Surveyor's exposition of the distribution of L.R. No. Muguga Jet Scheme/503 in accordance with the wishes of the deceased.

9. There is no dispute that each of the beneficiaries took possession of their respective share/portion which they occupy to date. I note that the daughters were to share the portion reserved for the deceased in the distribution of 2<sup>nd</sup> September 1995. None of them disputed the mode of distribution or raised issue when their mother was alive. The sale agreement between Caroline and her two sisters on the one hand and Nahashon Waweru Kamau on the other, is clear that the sisters were selling their beneficial share from the Estate of the deceased and that their share measured 0.1012 Ha. It is noteworthy that they too commenced the sale transaction before the grant of letters of administration was issued and are equally guilty of intermeddling in the Estate.

10. It is my view that the house Caroline built for her mother was a gift to her mother and did not entitle her to a larger stake in the Estate unless the deceased said so. I observe that nine out of the ten beneficiaries signed the consent dated 9<sup>th</sup> March 2015 for the name of the deceased Administrator to be substituted with that of John Ngugi Mbugua and also to the mode of distribution that he proposed. Caroline's proposed mode of distribution on the other hand, was not accompanied by the consent of any

of the other beneficiaries.

11. For the foregoing reasons the summons for confirmation of grant dated 28<sup>th</sup> January 2015 is hereby dismissed for want of merit. The summons dated 9<sup>th</sup> March 2015 for rectification and confirmation of grant is hereby allowed. In the premise I order as follows:

1. That the grant of letters of administration intestate made in this matter on 13<sup>th</sup> June, 2013 be and is hereby rectified and the name of George Mungai Mbugua (now deceased) is substituted with the name of John Ngugi Mbugua.
2. Phyllis Nyambura Mungai widow of George Mungai Mbugua is hereby included as a beneficiary in this cause.
3. The grant of Letters of Administration issued to George Mungai Mbugua on 13<sup>th</sup> June 2013 is hereby confirmed to John Ngugi Mbugua.
4. The Estate shall be divided in terms of the proposed mode of distribution annexed to the application dated 9<sup>th</sup> March 2015.

**DATED, SIGNED and DELIVERED at NAIROBI this 15<sup>th</sup> day of July 2015.**

**L. ACHODE**

**JUDGE**