



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

FAMILY DIVISION

SUCCESSION CAUSE 1293 OF 2009

IN THE MATTER OF THE ESTATE OF ADOLF ISAAC MUCHIRI GIKONYO (DECEASED)

CAROLINE NJOKI MUCHIRI.....APPLICANT/OBJECTOR

VERSUS

JANE NJERI MUCHIRI.....1ST RESPONDENT

ANTHONY MAINA MUCHIRI.....2ND RESPONDENT

JUDGMENT

The deceased died on 14th March, 2009 as per the death certificate No. 241818

By an application filed on 14th November, 2013, the Respondents filed summons for confirmation of grant. In the supporting affidavit, the deponent, the 1st Respondent and administrator of the estate of the deceased, outlined in the petition filed on 5th June, 2009 and the letter from the local administration,

the beneficiaries of the deceased's estate as;

- | | |
|--------------------------------|-----------------------|
| 1. Jane Njeri Muchiri | - Widow/Administrator |
| 2. Anthony Peter Maina Muchiri | - Son |
| 3. Hellen Nyaguthii | - Daughter |
| 4. Mary Wairimu Muturi | - Daughter |
| 5. Caroline Njoki Muchiri | - Daughter |

The summons for confirmation also list the assets of the deceased that are available for distribution to the beneficiaries. These are;

1. L. R. No. 416 Kariobangi
2. L. R. No. Block 61/5999 – Kibera
3. Nairobi Block 75/846 Buruburu Phase II
4. Plot No. 1/38 Nyeri Town
5. Plot No. 122 Nyeri (Ruringo)
6. Stall No. 409 Kibera
7. Nakuru/Lare/228
8. L. R. 36/1/421 - Eastleigh
9. L. R. 36/VII/378 - Eastleigh

The proposed mode of distribution is that the widow and administrator of the estate vide the grant issued on 16th November, 2009 to hold all the above listed properties on a life interest and in trust in equal shares to all the beneficiaries' children of the deceased.

The consents for confirmation of grant were by the administrators' widow of the deceased, the son of the deceased and two (2) daughters of the deceased with the exception of the last born daughter Caroline Njoki Muchiri; a step daughter to the widow of the deceased and step sister to the other siblings.

The Applicant Objector Caroline Njoki Muchiri through Counsel filed Notice of Preliminary Objection to the summons for confirmation on 15th November, 2013 on grounds that;

- a. There is pending an application for revocation and annulment of the grant of letters of administration of 16th November, 2009 and the Application dated 22nd November, 2009 that are pending.
- b. The Application for summons for confirmation cannot be heard and determined it is premature and should be struck out with costs to the Objectors.
- c. The Objector filed an Affidavit of Protest Against confirmation of grant on 24th February, 2014.

In a nutshell she stated;

- i. The deceased during his life time bought property L.R. 36/1/421 Eastleigh and it was registered in her name and Hellen Nyaguthi Muchiri.
- ii. The widow/administrator has been collecting rent from the said property without any share to her and she is excluded in the management of the property.

Therefore she cannot trust the widow/administrator to administer the estate especially to share fairly and therefore she demands;

- a. L. R. Nairobi/Block 75/846 – Buruburu be transferred to her.
- b. L. R. 36/1/421 – Eastleigh she gets her share of the property.

The son of the deceased, Maina Muchiri filed the Replying Affidavit to the Protest Against Confirmation of grant application; on 4TH April, 2014 and he deponed as follows; the deceased during his lifetime bought the following properties and registered them as follows;

1. Phase 2 Plot No. 279 and 980 - Kamae settlement Scheme was registered in the name of Caroline Njoki Muchiri (Objector)
2. Plot 26151 Kasarani Miriki was registered in the names of Caroline Njoki Muchiri and 2 others
3. Plot No. 4141 Kariobangi Light Industries - Anthony Maina (self)
4. Plot No. 229 – Kamae Resettlement Scheme was registered in the name of Hellen Nyaguthii Muchiri
5. Plot No. 413 Kariobangi Light Industries registered in the name of Mary Wairimu Muchiri.

All these were gifts *inter vivos* distributed during the deceased's lifetime to his children.

The following properties were bought during the deceased and widow's marriage of 51 years;

1. L. R. No. Nairobi Block 75/846 Buruburu Phase 2 (matrimonial home) bought in 1976.
2. Plot No. L.R. No. 8/378 Eastleigh bought in 1985.
3. Plot L.R. 36/1/421 Eastleigh bought in 1987.

The Petitioner filed a Replying Affidavit and on 20th June, 2014 and reiterated the ownership of properties distributed by the deceased during his lifetime as follows;

- a. Plot No. 279 Kamae Settlement Scheme Phase 2 – Caroline Njoki Muchiri
- b. Plot 950 Kamae Settlement Scheme Phase 2- Caroline Njoki Muchiri
- c. Plot No. 26151 Kasarani Mwiki - jointly Caroline Njoki Muchiri, Anthony Peter Maina and Hellen Nyagithi Muchiri

The documents of the Title were attached to the application.

HEARING

On 1st July, 2015 Jane Njeri Muchiri aged 70 years testified in Court that she was married to the deceased Adolf Isaac Muchiri Gikonyo in the 1970s and they had three (3) children. She was brought the 4th child Caroline Njoki Muchiri by her husband as she was left outside her gate at 1 ½ years of age by her biological mother. She took her in and brought her up with the other children of the marriage.

She reiterated the contents of her affidavit filed in Court on the properties and the proposed mode of distribution. She claimed that she has a life interest over the deceased estate and thereafter the properties would be divided equally between the four (4) children including the objector.

When her husband died, Caroline's mother Mrs. Ann Njeri Jenkins came back from Australia. There after she claimed the Objector is her daughter and had her move out of the house in Buruburu. The administrator confirmed that the Petition for letters of administration is signed by the Objector but she was not sure if she signed it or not as she did witness the signing of the document

Anthony Peter Maina Muchiri testified and told the Court that the administrator (PWI) is his mother she was appointed administrator as she ranks in priority as she is the only surviving spouse of the deceased. She has life interest in the property of the deceased.

Apart from the Objector, the other siblings have no problem with the grant being confirmed. The Objector filed a suit **No. 564 of 2009 in ELC Division of the High Court** to contest ownership of L. R. 36/1421 Eastleigh.

She filed an application on 20th November, 2010 to have the rent receivables from the property put in a joint account and shared among the beneficiaries and the Court gave a ruling on 29th October, 2012 declining the same. He confirmed that during the deceased's life time he bequeathed him Kibera house where he resides to date.

Caroline Njoki Muchiri stated that she is a step child of the administrator and daughter of the deceased. She is the daughter of Anne Wairimu Jenkins who resides in Australia and was brought up by the administrator and widow of the deceased. She relied on her affidavit of protest and supplementary affidavit of 26th May 2014 and 27th May, 2014 respectively.

She stated she grew up in the home feeling different from her siblings and it became more difficult after her father's demise. She was sidelined from the family meetings and the search for the deceased's properties was conducted in private. She stated that Anthony Muchiri came with a document for her to sign and she asked what it was for and refused to sign it. She was told it was not her concern. She felt that things were not being done in an open and fair manner and opted to move out of the home. While her 3 year old daughter was sick, she attended to her alone and her maternal mother is the one who stepped in to help her. Apart from the Court proceedings they did not talk or see each other.

She is protesting about the following issues;

She is entitled and does not get a share of

a. Rent receivables from

- i. L. R. 416 Kariobangi
- ii. Nairobi Block 75/846 Buruburu Phase II
- iii. Stall No. 409 Kibera
- iv. L. R. 361/vii 378 Eastleigh

b. The family built another home in Karen and she has never been invited or been made to feel part of that home. She asked in Court to confirm the grant on condition she gets her share of the estate as she is not sure she will be treated fairly. She wants an equitable share of the estate so that she moves on;

c. She wants to live in Buruburu House Phase II

d. She wants her share of the Nakuru/Lare/228 which is 9 acres and she gets 2 acres.

At the conclusion of the hearing in Court sought the parties to hold a meeting at home and amicably resolve the matter. Both the Objector and son of the deceased filed separate reports on 30th July, 2015. They met and talked but did not agree on distribution of the estate. The Court is to determine the same.

ISSUES

1. Is the summons for confirmation of grant to be confirmed or not?
2. Was the grant issued on 16th November, 2009 valid and legal or not and if so should it be annulled and revoked?
3. What if at all is the most just and equitable distribution of the deceased's estate?

ANALYSIS

There is a Preliminary Objection of 15th November, 2013 that ought to be determined first before the application of summons of confirmation of grant is determined.

MUKISA BISCUITS MANUFACTURING CO. LTD VS WESTEND DISTRIBUTORS (1969) E. A. 696 LAW J. stated;

“A preliminary objection consists of a point of law which has been pleaded, or which arises by clear implication out of pleadings and which if argued as a preliminary point may dispose of the suit.”

In the instant case the issue raised is that there are summons for Revocation of Grant issued on 16th November, 2009. The grant issued was not with the Objector's consultation, knowledge and consent. She did not sign the consent to have the petition filed. Although the petition is signed she did not sign against it. This is not a valid, regular or legal Objector's consent.

However, this Court is of the view that **Section 66 of the Law of Succession Act Cap 160** gives the surviving spouse priority in appointment of administrator in intestate estate. Secondly, since all the beneficiaries are adults there was no legal obligation to have joint administrators as a trust was not envisaged.

The ruling of Hon. Justice L. Njagi of 29th October, 20112 states that;

“what one can discover from the facts therein is that there is need to expedite the confirmation of grant made in this matter so that the estate may be distributed speedily once and for all. The alternative would be to pursue the application for revocation of grant which would serve to put the clock back and delay the solution to the problems between the parties herein”.

The Court finds revocation and annulment of grant under **Section 76 of Law Succession Act Cap 160** is not warranted as the administrator fully disclosed all beneficiaries including her step daughter the Objector in all the pleadings. There was no concealment of facts or fraud.

The Objector stated that it is Anthony who gave her document/petition to sign and not the administrator. So it is possible she did not know who signed on the Objector's part, whether it is the Objector or anyone else who forged her signature. The Objector/Protector in her testimony stated that she is eager to resolve the matter to get her share and move on.

The totality of the facts militate against the revocation of grant so the application of 16th November, 2009 is dismissed. The next application is the summons for confirmation of grant.

Section 35 of the Law of Succession Act Cap 160 states; "the surviving spouse shall be entitled to

- a. ***The personal and household effects of the deceased absolutely***
- b. ***A life interest in the whole residue of the net intestate estate"***.

In the instant case the administrator, widow of the deceased is entitled to life interest over the deceased's estate. Ideally, during their lifetime it is expected that both spouses depended on each other for social and economic support. Life interest is the legal protection bestowed on surviving spouses so as not to be ousted and property withdrawn from them or they are mistreated in any way after the demise of spouses.

Having said so, each matter must be decided on its own merits based on the unique circumstances of each case.

In the instant case, in **Section 38 Law of Succession Act Cap 160** the children of the deceased ought to share the estate equally. In practical terms it is hardly possible to share equally in certain instances due to various prevailing factors e.g. age, business and professional opportunities, residence etc. However, the Court must endeavour equitable distribution of an estate in terms of **Section 42 of the Law of Succession Act Cap 160** which states;

"when an intestate has during his lifetime given or settled any property to or for the benefit of a child, grandchild or house that property shall be taken into account in determining the share of the net intestate estate finally accruing to the child, grandchild or house".

The Court has read the pleadings heard the evidence and finds that the Objector/Petitioner may have genuine fear that if she does not get any share of her late father's estate now, with the prevailing distant and tense family relationships she may lose out. Secondly, she has not benefited from the estate in any way since the demise of the deceased whereas her siblings have properties allocated to them by the deceased.

Thirdly, by the ruling of Hon. Justice L. Njagi of 29th October, 2012 the Court did not allow or uphold sharing of the rent receivables from the properties.

These reasons persuade this Court that although the widow/administrator has a life interest in the deceased's estate; certain properties ought to be handed over and transferred to the Objector/Protector.

FINAL ORDERS

The Court confirm the summons for confirmation filed on 14th November, 2013 under **Section 71** of the **Law of Succession Act** on the following terms;

The distribution of the estate of the deceased shall be as follows;

1. L. R. No. 416 Kariobangi Anthony Maina and

- L. R. No. 414/4141 Mary Wairimu Muchiri
2. L. R. No. Block 61/599 – (Kibera) Anthony Maina
3. Nairobi Block75/846 - Buruburu Widow/administrator in life interest
Phase II Matrimonial house
4. Plot No. 1/38 Nyeri Town – held by administrator in life interest
5. Plot No. 122/Nyeri/Ruringo – held by administrator life interest
6. Stall No. 409 Kibera – held by administrator in life interest
7. **Nakuru/Lare 228 – Jointly held by the widow and 4 children(share
Equally) Caroline Njeri Muchiri – to get her 1/5 share**
8. L. R. No.36/1/421 – Eastleigh was developed by the administrator from 1ststorey to 4th storey building and is subject to **ELC 546 of 2009** – to await determination of the Court before distribution.
9. L. R. 36/VII/378 – Eastleigh the administrator developed from1st storey to 2nd storey building it remains with the widow administrator in life interest.
10. **Plot No. 279 - Kamae Settlement Scheme Phase 2 – Caroline Njoki Muchiri**
11. **Plot No. 980 – Kamae Settlement Scheme Phase 2- Caroline Njoki Muchiri**
- 12.**Plot No. 26151 – Kasarani Mwiki – Jointly Caroline Njoki Muchiri,
Anthony Peter Maina and Hellen Nyaguthi Muchiri
1/3 share to Caroline Njoki Muchiri**
13. Plot No. 413 Kariobangi Light Industries – Mary Wairimu Muchiri
14. Kamae Settlement Scheme Phase 2 Plot No. 229 – Hellen Nyaguthi Muchiri

After the widow/administrator's life interest in the residue estate the children of the deceased shall share equally under **Section 35 Law of Succession Act Cap 160**.

READ AND SIGNED IN OPEN COURT AT NAIROBI THIS 6TH DAY OF OCTOBER, 2015

M. MUIGAI

JUDGE

In the presence of: