



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
SUCCESSION CAUSE NO. 1522 OF 2013

IN THE MATTER OF THE ESTATE OF KIHONDORO NJATHA (DECEASED)

RULING

1. This cause relates to the estate of one Kihondoro Njatha, who died on 17th September 1980. The succession proceedings to his estate commenced in April 1981 in **Githunguri RMCSC No. 22 of 1981** under the provisions of Section 120 of the Registered Land Act Cap 300, Laws of Kenya, now repealed. When the Law of Succession Act, Cap 160, Laws of Kenya, came into force on 1st July 1981, the proceedings in **Githunguri RMCSC No. 22 of 1981** were abandoned and fresh proceedings commenced in **Githunguri SRMCSC No. 25 of 2003**.
2. The proceedings in **Githunguri SRMCS No. 25 of 2003** were initiated by a petition filed by Njatha Kihondoro in his capacity as a son of the deceased. He stated that the deceased had been survived by seven (7) individuals, namely Njatha Kihondoro, Njatha Muchina, Njuguna Muchina, Karicu Muchina, Kanoga Muchina and Wanjiku Muchina. The deceased was said to have died possessed of five (5) parcels of land being Githunguri/Githunguri/599 and Githunguri/Kanjai/T.85, T.139, T.192 and 325. A grant of letters of administration intestate was duly made on 6th May 2003 to Njatha Kihondoro.
3. On the 24th July 2012, the administrator filed a summons for confirmation dated 24th July 2012 of the grant of 6th May 2003. He indicated that two heirs – Njatha Muchina and Wanjiku Muchina – had since died. The list of survivors that he attached to the application included grandchildren. He had added another asset to the schedule of assets, that is to say 85 shares in Arahuka Farmers Company Ltd.
4. When the matter came up for hearing on 3rd October 2012 the court noted that the names of two daughters of the deceased – Jane Wairimu Muchina and Eunice Nyokabi Njuguna – had been omitted. It was directed that the administrator files a further affidavit disclosing all the children of the deceased and distributing the estate to all of them.
5. The administrator complied with the directions of 3rd October 2012 and swore and filed on 23rd October 2012 and 19th November 2012 affidavits disclosing all the children of the deceased and proposed distribution of the estate. The affidavit of 23rd October 2012 did not allot any assets to Jane Wairimu Muchina and Eunice Nyokabi Njuguna, but of 19th November 2012 did.
6. When the matter came up for hearing on 22nd May 2013, the court took the position that it had no jurisdiction to distribute an estate whose gross value exceeded Kshs. 100,000.00, and subsequently ordered that the matter be forwarded to the High Court for the disposal of the Summons dated 24th July 2012.

7. The file in **Githunguri SRMCSC No. 25 of 2003** was forwarded to this court vide a letter dated 24th May 2013, and the present cause was duly opened.
8. The matter was first mentioned on 11th November 2013 before Kimaru J. when it was fixed for further mention on 23rd January 2014 to enable Kimaru J. study the file. On 23rd January 2014, only four of the heirs attended court and it was directed that the matter would be heard on 27th March 2014 when all the heirs were to attend court. On 27th March 2014, only three (3) heirs were in court, and the matter was then fixed for 14th May 2014. On 14th July 2014 only four (4) heirs attended court and distribution of the estate was postponed to 8th October 2014. On 8th October 2014 again only four (4) of the heirs attended court, and I ordered that the application be heard on 21st October 2014 in the presence of all the heirs.
9. On 21st October 2014, only four (4) heirs attended court. I was informed by the administrator, Njatha Kihunduro, that they had agreed on the distribution of the estate. One of the daughters was present. She said her name was Beth Nyokabi; she stated that she wanted to be given a share in her father's estate.
10. I have looked at the application dated 24th July 2012, together with the further affidavits of the administrator sworn on 23rd October 2012 and 19th November 2012, as well as the protest affidavit of Nafhtali Muchina Njatha sworn on 18th March 2013. I have noted from the affidavits of the administrator of 23rd October 2012 and 19th November 2012 that the deceased had nine (9) children. Distribution is proposed amongst eight (8) of the nine (9) children, with no explanation as to the fate of Mary Wanjiku. I shall presume that she died without children. I have noted that in his proposals the administrator gives the daughters of the deceased the shares in a limited liability firm, while the protestor apportions them a share in one landed asset. I note that the daughters are married. The one who appeared before me on 21st October 2014 stated that the daughters should be treated equally with the rest.
11. I am cognizant of the fact that the deceased died before the Law of Succession Act came into force, and technically therefore the estate should not be subject to the provisions of the Law of Succession Act. I am also cognizant of the coming into force of the Constitution of Kenya, 2010, which gives emphasis to equal treatment to all.
12. Having taken into account all the relevant factors, I hereby make the following orders-
 - a. **That the application dated 24th July 2012 is hereby allowed;**
 - b. **That the grant made on 6th May 2003 is hereby confirmed;**
 - c. **That the estate of the deceased shall be disposed of as follows-**
 - i. **Githunguri/Githunguri/599 to Karicu Muchina, James Njuguna Muchina, Njuguna Muchina, Nafhtali Muchina Njatha, Estate of Njatha Muchina, Jane Wairimu Ndungu in equal shares;**
 - ii. **Githunguri/Kanjai/325 to Njatha Kihondoro, James Njuguna Muchina, Njuguna Muchina, Nafhtali Muchina Njatha, Estate of Njatha Muchina and Eunice Nyokabi Njuguna in equal shares.**
 - iii. **Githunguri/Kanjai/T.85 to Njuguna Muchina and Nafhtali Muchina Njatha in equal shares;**
 - iv. **Githunguri/Kanjai/T.192 to James Njuguna Muchina and Estate of Njatha Muchina in equal shares;**

v. **Githunguri/Kanjai/T.139 to Njatha Kihondoro and Karicu Muchina in equal shares; and**

vi. **85 shares in Arahuka Farmers Company Limited to Jane Wairimu Ndungu and Eunice Nyokabi Njuguna in equal shares; and**

d. **That costs shall be in the cause.**

DATED, SIGNED and DELIVERED at NAIROBI this 2ND DAY OF OCTOBER, 2015.

W. MUSYOKA

JUDGE