



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYERI

SUCCESSION CAUSE NO. 34 OF 2012

***IN THE MATTER OF THE ESTATE OF THE LATE JACOB MWANIKI KARUKUNGI alias
MWANIKI JACOB KARUKUNGI***

JEMIMAH WANJIRU MWANIKI.....PETITIONER

VERSUS

KENNETH WACHIRA MWANIKI.....PROTESTOR

JUDGMENT

Jacob Mwangi Karukungi (herein “the deceased”) died on 30th August, 2009. According to the petition filed on 19th January, 2012 in succession of his estate, the deceased was survived by his wife the petitioner herein and four children one of whom is the protestor.

The affidavit filed in support of the petition shows that the deceased’s estate comprised the following assets:-

1. Kagaari/Kigaa/2910 measuring 0.74 acres
2. Kagaari/Kanja/2735 measuring 3.30 acres
3. Kagaari/Kanja/2640 measuring 3.80 acres
4. Kagaari/Kanja/2639 measuring 3.20 acres
5. Kagaari/Kanja/6317 measuring 0.12 acres
6. Kagaari/Kanja/5809 measuring 0.24 acres
7. Nyeri Municipality/Block 1/234
8. Motor Vehicle Registration Number KVV 711 (Datsun Pick-Up)
9. Barclays Bank Ordinary Shares, Account No. 0019085
10. Standard Chartered Bank Ordinary Shares, Account No.0004805
11. Kenya Airways Ordinary shares, Account No.0040723
12. Kenya Commercial Bank Account No. 041-101099832
13. Barclays Bank Account No. 4083205

The grant of letters of administration intestate of the deceased’s estate was made to his widow, the petitioner herein. In the affidavit in support of the summons for confirmation of grant dated 28th November, 2012 the administratrix proposed to have the entire estate devolve upon herself. The rest of the beneficiaries consent to this proposed distribution except the protestor.

In his affidavit of protest filed in court on 17th February, 2014 he deposed that the estate should be distributed amongst all the deceased’s survivors and beneficiaries to his estate and in particular he proposed that the estate should be shared out as follows:-

1. **Kagaari/Kigaa/2910** to be registered in the name of **Kenneth Wachira** absolutely;
2. **Kagaari/Kanja/2735** to be registered in the name of **Janice Muthoni Massimo** absolutely;
3. **Kagaari/Kanja/2640** to be registered in the name of **Lucy Njeri Mwaniki** absolutely;
4. **Kagaari/Kanja/2639** to be registered in the name of **Jemimah Wanjiru Mwaniki** subject to her life interest;
5. **Kagaari/Kanja/6317** acres to be registered in the name of **Kenneth Wachira** absolutely;
6. **Kagaari/Kanja/5809** measuring **0.24** acres, to be registered in the name of **Sally Wanja Ndegwa**;
7. **Nyeri Municipality/Block 1/234**, to be registered in the name of **Jemimah Wanjiru Mwaniki**.

The protestor proposed the movable assets to be distributed as follows:-

1. **Motor Vehicle Registration Number K VW 711** (Datsun Pick-Up) to be registered in the name of **Jemimah Wanjiru Mwaniki**;
2. **Barclays Bank Ordinary Shares, Account No. 0019085** to be transferred to **Jemimah Wanjiru Mwaniki**;
3. **Standard Chartered Bank Ordinary Shares, Account No. 0004805** to be transferred to **Jemimah Wanjiru Mwaniki**;
4. **Kenya Airways Ordinary shares, Account No.0040723** to be transferred to **Jemimah Wanjiru Mwaniki**;
5. Money in **Kenya Commercial Bank Account No. 041-101099832** to be shared out amongst **all the beneficiaries**; and,
6. Money in **Barclays Bank Account No. 4083205**, to be shared out equally amongst **all the beneficiaries**.

On 4th February, 2015, parties took directions to the effect that the protest be disposed of by way of written submissions which they subsequently filed.

I have considered these submissions and all I gather is that parties are in agreement that the estate should be distributed as proposed by the protestor; in essence, therefore, there is no dispute for this court to determine. For avoidance of doubt this is what counsel for the petitioner/administratrix said in his submissions:-

“Your Lordship, this is a 2012 petition being dragged for no reason at all. Therefore the estate should be distributed as earlier proposed by our letter of 29th September, 2014 and confirmed by the protestor’s advocate’s letter of 9th October, 2014 on the following distributions:-

1. Jemimah Wanjiru Mwaniki to inherit

(a) Kagaari/Kanja/2639 (b) Nyeri Municipality/Block I/234

(c) Motor vehicle K VW 711 (d) Shares in Barclays and Commercial Banks

2. Sally Wanja Ndegwa to inherit

(a) Kagaari/Kigaa/5809

3. Kenneth Wachira Mwaniki to inherit

(a) Kagaari/Kigaa/2910

(b) Kagaari/Kanja/6217(sic)

4. Lucy Njeri Mwaniki to inherit

(a) Kagaari/Kanja/2640

5. Janice Muthoni Massimo to inherit

(a) Kagaari/Kanja/2735

6. Monies in Barclays Bank and Kenya Commercial Bank Limited to be shared in equal shares to the 5 beneficiaries.”

This proposal is obviously a departure from the administratrix's earlier proposal on distribution of the deceased's estate as elicited in her affidavit in support of the summons for confirmation of grant; it is however, consistent with the protestor's proposal for distribution of the same estate.

In these circumstances, I would allow the protest; the grant is confirmed and the estate shall be distributed as proposed in paragraph 6 (a) to (i) of the affidavit of protest sworn on 17th February, 2014. Parties will bear their own respective costs.

Signed, dated and delivered in open court this 9th day of October, 2015.

Ngaah Jairus

JUDGE