

IN THE HIGH COURT OF KENYA AT NAIROBI

FAMILY DIVISION

SUCCESSION CAUSE NO.2292 OF 2008

IN THE MATTER OF THE ESTATE OF NICHOLAS NGETHE THIONG'O – DECEASED

EDWARD KIARIE THIONGOAPPLICANT

VERSUS

JOHN CHEGE NGETHE.....1STRESPONDENT

NANCY WANJIRU NJUGUNA.....2NDRESPONDENT

ELIZABETH NJERI NGETHE.....3RDRESPONDENT

RULING

On 15th December 2011, this court delivered judgment in respect of a dispute involving the beneficiaries. The beneficiaries were not able to agree on how the properties that comprise the estate of the deceased were to be distributed. In the said judgment, the court distributed the said properties to the beneficiaries. It was apparent from subsequent applications that were filed, that some of the beneficiaries were aggrieved by the said decision. For instance, Edward Thiong'o Kiarie filed an application seeking to have the entire distribution re-looked at on the grounds that some beneficiaries had been excluded from the distribution. In the premises, he sought to have the entire judgment set aside. On their part, Pauline Wanjiku Ng'ethe and Elizabeth Njeri Ng'ethe sought to have the judgment reviewed and set aside on the grounds that the distribution was unfair to some of the beneficiaries of the estate of the deceased. The Applications were in some instances opposed, while in other instances they were supported. For instance, George Kamau Ng'ethe and John Chege Ng'ethe filed replying affidavits in which they proposed a complete redistribution of the estate of the deceased. On his part, Edward Kiarie Thiong'o was of the view that the court should uphold the distribution in the judgment save for the variations he proposed in paragraph 25 of his replying affidavit.

During the hearing of the applications, this court heard oral rival submission made by Mr. Mutitu for the Objector, Mrs. Kalwa for the 2nd and 3rd Respondent. She also represented the interested party. Mr. Makau appeared for the 1st Petitioner. The issue for determination by this court is whether the Applicants made a case for this court to review its judgment. It was apparent from the submission made that all the parties to the proceedings were in one way or the other aggrieved by the distribution done by the court. This court is of the view that, in rendering a decision in a succession dispute, the decision of the court, where possible, should aid in the reconciliation of the family members. In the present case, it was apparent that the decision of the court has instead of resolving the dispute, created opportunities for further disputes. Part of the problem leading to the making of the decision lay with the parties. Instead of the parties opting to adduce *viva voce* evidence to lay out their case on how they preferred the properties that comprise the estate of the deceased to be distributed, they informed the court that the distribution ought to be determined by the court by hearing submission of counsel and by the court relying on the affidavits filed by the parties. Therein lay the seed of the current discord between the beneficiaries of the estate of the deceased. Part of it is also attributed to the fact that some of the beneficiaries are unwilling to accept that other beneficiaries too have a right to inherit the properties that belonged to their late father.

So as to resolve the dispute once and for all, and in the interest of justice, this court will review and set

aside its judgment delivered on 15th December 2011 on the grounds that the said decision was apparently not informed by all the facts which should have been brought, at the time of the hearing of the case, to the attention of the court. The parties are ordered to proceed with the hearing of the case on distribution by adducing *viva voce* evidence before any Judge in the Family Division. Since this case involves family members, there shall be no orders as to costs.

DATED AT NAIROBI THIS 2nd DAY OF OCTOBER 2014

L. KIMARU

JUDGE