



**REPUBLIC OF KENYA**

**High Court at Nakuru**

**Succession Cause 14 of 2005**

**IN THE MATTER OF THE ESTATE OF GODFREY WANJOHI MAHINDA (DECEASED)**

**MUGURE MAHINDA.....PETITIONER**

**VERSUS**

**LAWRENCE MAHINDA.....OBJECTOR**

**R U L I N G**

Godfrey Wanjohi Mahinda died intestate on 30/8/2004 in the County of Los Angeles, USA. He left behind his wife Mugure Mahinda and seven children namely:

1. Lawrence Njaramba Mahinda
2. Lucy Wanjiku
3. Peter Githitu
4. Edward Ndururi
5. Anthony Ndegwa
6. Josephine Muthoni
7. Grace Nyambura

Mugure Mahinda petitioned this court for grant of letters of administration on 1/7/2005. On 5/3/07 Mugure Mahinda filed an application seeking confirmation of grant and distribution of the deceased's estate in terms of paragraph 3 of the applicant's affidavit where by some of the properties were distributed to the beneficiaries while some devolved to the applicant. A consent order accompanied the application, signed by all beneficiaries except Lawrence Mahinda, the objector herein. The objector filed an affidavit dated 30/6/2008 objecting to the confirmation and distribution. On 14/7/2008, Justice Maraga directed that the matter proceed by way of viva voce evidence. The objector's evidence was partially taken on 27/4/2009 when he asked for an adjournment to have the properties valued. The objector has never had the properties valued as requested and on 13/10/09, the judge observed that the objector had not filed his proposal on distribution and the objector was said to be missing from home. Since 22/6/09, the objector has never attended court nor did he file the valuation report or his proposal on distribution.

The objector first filed an affidavit dated 30/6/08 in which he deponed that he is the first born son of the

deceased; that he declined to sign the consent on distribution because he was dissatisfied with the mode of distribution in that the bulk of the estate has been vested in the petitioner who was then 70 years old; that some assets, like the motor vehicle KAD 472D, 3 tractors, ploughs, 2 tractor harrows, one planter, two weighing machines, 50 cows, 110 goats, 50 sheep and one sprayer had been left out of the schedule and distribution and yet they were available for distribution. He also complained that he has been given property of much lower value than the other beneficiaries and that the acreage of the land, money in the bank, income from rental houses, and shares had not been reflected. The objector also filed submissions on 14/7/2008 and 4/9/2009. Although it is not an affidavit, J. Maraga observed that the submissions raised very serious issues that the petitioner/respondent had to respond to paragraph by paragraph. The objector stated that he used to manage the deceased's farms from where he earned a living but it is no more; that with the consent of the deceased, he started a tree planting project on a 20 acre plot whose potential was Kshs.7 million within 7 years but the petitioner and some of his family members have frustrated it. He questioned why the value of both the moveable and immovable assets were not ascertained, that the petitioner has not specified what property is jointly owned, that there is no evidence that his brothers Anthony and Edward gave money for property to be purchased for them by the deceased; that there was no evidence of how much was spent on the deceased's treatment and why Lucy and Lawrence were allowed only one property each.

On 16/12/2009, the judge directed that the petitioner file an answer to all issues raised by the objector paragraph by paragraph which she did in the further affidavits dated 2/6/2010 and 15/11/2010 respectively. The petitioner deponed that the failure by the objector to sign the consent to allow distribution of the deceased's estate was meant to frustrate her because all the other beneficiaries were agreed on the mode of distribution. She deponed that a demand for treatment records of the deceased and expenses by the objector were in bad taste because the deceased was sick for 3 years, treated at Nairobi Hospital but the objector did not visit or find out about the deceased's illness; that the deceased then went to the USA for treatment where the other children assisted in his medical expenses but the objector did not even enquire about his health and instead failed to manage the farm and sold all the livestock, chicken and mismanaged the bee project started for him; that the tree planting project on the 20 acres plot never took off as the objector leased it and drunk all the proceeds; that the petitioner opened for the objector an account at Post Bank with Kshs.120,000/= to enable him start a business but he used it all on alcohol; that the objector has neglected his wife and children and him and his family all depend on the petitioner and live in her house; that when the objector was given a chance to value the estate he was told to meet the cost. According to the petitioner, all the family accounts and properties that are in the joint names of the deceased and petitioner and they revert to her. At paragraph 15 of the further affidavit, the petitioner suggested how she wants the deceased's estate should be distributed. However, she said that the farm implements cannot be distributed at this stage because the farm work would come to a stand still and yet the income therefrom is used to pay rates of the undeveloped plots. She explained in detail that the objector is an alcoholic who has squandered all that falls in his hands. The petitioner also complained that the objector has been a problem to the whole family, is irresponsible and cannot be trusted with any property and that if any property is given to him, it should be held in trust for his wife and children.

I am satisfied that the petitioner did substantively respond to the objector's allegations in his submissions. However, the petitioner's depositions do raise serious allegations against the objector which the objector needed to respond to. They remain controverted because the objector has not come to court since 22/6/09, and the petitioner denies that the objector has been home since that date. It is the objector who objected to the distribution of the estate as agreed by other beneficiaries. He is aware that this matter is pending before the court and he has the duty to check with the court to find out how the matter is proceeding. Despite several adjournments from 22/6/09, the objector has not attended court.

There is a serious allegation that the objector is a drunk and alcoholic addict who, though aged 51 years, was still living with his mother in her house, the petitioner; that he is irresponsible, has not been able to work though trained as a teacher, has squandered money given to him to start business. The petitioner even suggests that whatever will be transmitted to the objector should be held in trust for his family because he will squander it. The objector needed to respond to these very serious allegations against him.

The objector apart from making several allegations against the petitioner and members of his family that

they are out to ensure he does not benefit from the estate like the others, failed to file any affidavit making proposals on the distribution. Likewise, he failed to file the valuation report on the assets of the estate though the court allowed him time to do so. The court has looked at the proposed distribution by the petitioner and will distribute the estate as below:-

(1) The following properties:-

1. IR 22473 (LR 209/6918;
2. Nakuru/Municipality Block 11/148;
3. Nakuru/Municipality Block 5/156.

(Annexures NMI A, B & C) are registered in the joint names of the deceased and Praxedes Mugure Mahinda (the petitioner). They are not subject to distribution and they therefore devolve to the petitioner.

(2) In the petition for grant of letters of administration, the petitioner exhibited the following certificates:-

1. Share Certificate for KFA Ltd;
2. The Kenya Grain Growers Co-operation Union Ltd;
3. Kenya Finance Corporation Ltd;
4. HFCK Ltd;
5. Uchumi Supermarkets Ltd;
6. Crown Burger K Ltd.

All the above are registered in the joint names of the deceased and the petitioner and are not subject to distribution because they devolve to the petitioner upon the demise of the deceased.

(3) The other shares in Barclays Bank, Jubilee, Insurance Company Ltd, BAT, Kenya Breweries, Kenya Bowling Centre, Standard Chartered Bank, Shelter Building Society should be sold and shared equilly amongst all the beneficiaries.

(4) As respects IR 22473 (LR 209/6918), the petitioner deponed that the deceased wanted it to be bequeathed to their daughter, Lucy Wanjiku Mahinda, and since it seems all the beneficiaries were agreed save for the objector, the petitioner should transfer the said property to Lucy Wanjiku Mahinda.

(5) The petitioner deponed that Nakuru Municipality Block 25/186, 187, 89, 721, 449, 120. 803, 661, 86, 286 and 60 are jointly owned by Anthony Ndegwa, Edward Ndururi and the deceased. All other petitioners, save for the objector, were agreed that these properties devolve to the two surviving owners. No evidence has been exhibited as to the existence of the said plots. However, since the objector offered no evidence to the contrary, the court will agree with the petitioner that the said properties do devolve to Anthony Ndegwa and Edward Ndururi.

(6) Nakuru Municipality 2/315, where the homestead stands (one acre) will be shared equally amongst the beneficiaries.

(7) Solai Rural Lanet LR 464/29, 24 acres, be shared equally amongst the beneficiaries.

(8) LR 12109 (197 acres) be sold and the proceeds be used to develop urban plots which are undeveloped. The court was not told exactly which are the undeveloped plots. Anyway, once developed, the plots should be shared equally amongst the beneficiaries.

(9) Nakuru Miti Mingi Block 84, which the petitioner did not give the acreage or its status, should also be distributed in equal shares amongst all beneficiaries.

(10) Nyeri/Ruguru/Gachika/223 – to be shared equally between the deceased's sons each getting 2 acres and the balance to the widow, Mugure Mahinda.

(11) Nyeri Municipality Block 111/86 – be sold and the proceeds shared equally amongst the beneficiaries.

(12) The objector is also entitled to Nanyuki (Nanyuki West Timau Block 1/167) in addition to the properties that will be shared equally.

(13) The motor vehicle and the farm implements be left intact for the use of the petitioner and other beneficiaries on the land.

(14) Money held in the deceased's accounts at Barclays Bank Nakuru East 6008161, Housing Finance A/C No.200-0005069, Nyeri Farmers Sacco Society Ltd A/C 801-09-709, to be shared equally amongst the beneficiaries.

The objector's character was put into question and the allegations against him have not been rebutted by him. To safeguard the objector's interests and that of his family, I direct that upon distribution, his property be registered in the joint names of the objector and his wife. Each party to bear its own costs. It is so ordered.

**DATED and DELIVERED this 7<sup>th</sup> day of May, 2013.**

**R.P.V. WENDOH**  
**JUDGE**

**PRESENT:**

Mugure Mahinda in person for the petitioner

N/A for the objector

Kennedy – Court Clerk