

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIVASHA

HIGH COURT SUCCESSION CAUSE NO. 8 OF

2017

IN THE MATTER OF THE ESTATE OF KARANJA

KINUTHIA ALIAS KAGUNYI KARANJA

(DECEASED)

JUDGMENT

1. The deceased herein Karanja Kinuthia died on 19th August 1991. On 12th July 2016, his son and the daughter (herein “the petitioners”) filed a petition seeking for or letters of administration intestate. The petition was gazetted in the Kenya Gazette dated 16th September, 2016 and as no objection proceedings were filed, the court issued the letters of administration intestate on 9th November 2016.
2. By a chamber summons application dated 6th March 2017 and amended on 20th July, 2017, brought

under section 76 of the Law of Succession act (hereinafter "the Act") and Rule 44 of Probate and Administration Rules, and all enabling provisions of the law, the deceased's daughter Priscilah Nyambura Karanja sought for the following orders: -

a) Spent

b) That this Honourable court be pleased to revoke and/or annul the Grant of Letters of Administration intestate for the Estate of Karanja Kinuthia alias Kagunyi Karanja (deceased) issued by the Chief Magistrates Court in Naivasha under Succession Cause No. 122 of 2016 to the 1st and 2nd respondents on 9th November 2016.

c) That this Honourable Court be pleased to make orders and/or allow the applicant herein Priscillah Nyambura Karanja to be enjoined as one of the petitioners in respect of the estate of the deceased herein.

d) That this Honourable court be pleased to include land parcels NAIVASHA/MWICHIRINGI BLOCK 4/1917, NAIVASHA/MWICHIRINGI BLOCK 4/1918, NAIVASHA/MWICHIRINGI BLOCK 2/426 and NAIVASHA/MWICHIRINGI BLOCK 2/428.

e) That this court be pleased to make that the petitioners failed to include all the beneficiaries including an interested party one Peter Njogu Njoroge and all the beneficiaries and interested party should be included as beneficiaries in this petition.

f) That the Honourable court be pleased to grant orders of injunction restraining the 1st and 2nd petitioner/respondents herein either bby themselves, their servants, agents and/or by any other persons acting on their behalf from transferring, alienating, interfering, meddling, or doing such acts as would interfere and/or

intermeddle with land parcels forming the estate of the deceased until the case herein is heard and determined or until further orders of this court.

3. The application is based on the grounds thereto and the supporting affidavit of the applicant dated 24th July 2017, wherein she set out the list of beneficiaries of the deceased's estate at paragraph 2 and the properties at paragraph 3.
4. She avers that the petitioners secretly and without the knowledge of other beneficiaries petitioned the court for and obtained the grant of letters of administration intestate issued on 9th November, 2016.
5. That the 2nd petitioner is the wife of the late George Mburu Kagunyi who was the son of the deceased herein and his 1st wife the late Naomi Wanjiru. Thus the 2nd petitioner not a child of the deceased as

alleged and that none of the beneficiaries appointed her as an administrator of the deceased's estate

6. That further that the letter from Lakeview Estate Area Assistant Chief used to file the succession cause herein is misleading as it does not indicate all the children and/or beneficiaries of the deceased and is not the beneficiaries' area chief. That the letter should have been written by the Chief of Hells Gate Location, who would have given the correct position of the beneficiaries of the deceased.
7. It was averred that, the petitioners misrepresented the value of the deceased estate as Kshs. 1,000,000 while the same is in excess of Kshs. 20,000,000. Further, the 1st petitioner has fraudulently and illegally caused himself to be registered as the owner of two (2) plots of the deceased namely;
Naivasha/Mwichiringiri Block 2/426,
Naivasha/Mwichiringiri Block 2/428.

8. Furthermore, the 1st respondent has registered land parcel Naivasha/Mwichiringiri Block 4/ 1917 and subsequently sold it before the succession cause is finalized. Similarly, he has left out Land Parcel Naivasha/Mwichiringiri Block 4/1918, which had been sold by the deceased to Peter Njogu Njoroge, the interested party herein.
9. That the conduct of the petitioners demonstrates that they cannot be entrusted to administer the estate of the deceased and the applicant sought to be included as an administrator.
10. However, the petitioners opposed the application vide a replying affidavit sworn on 13th December 2017 sworn by the 1st petitioner. He averred that, the 2nd petitioner is a beneficiary of the deceased.
11. That, Peter Njogu Njoroge, the interested party, is a complete stranger to the estate introduced by the applicant without explaining his locus standi and his claim in the cause. That there are no supporting

documents to support the purchase of land claim and therefore the application for enjoinder must fail.

12. That it is trite law that, a party claiming any part of a deceased estate and has been left out from a succession cause must apply to be enjoined. That in the instant matter there is no evidence that applicant has authority to file the application on behalf the interested party.

13. Further that the applicant is seeking to introduce properties that do not form part of the estate of the deceased, and that the properties listed in paragraph 3 of the supporting affidavit are erroneous. Furthermore, the applicant has failed to tender any documents in the form of title documents as provided for in section 24 and 26 of the Land Registration Act, 2012 to prove the subject property belong to the estate.

14. The 1st petitioner averred that he had purchased land parcel No. Naivasha/Mwichiringiri Block 2/428 and was issued with a title document. That he also purchased Naivasha/Mwichiringiri Block 2/428 from Nyamathi Farmers' Cooperative Society and title documents issued to him.

15. That in addition, he purchased land Naivasha/Mwichiringiri Block 2/ 917 from one Joseph Muchemi Theuri and subsequently sold it to Danville Ventures Limited, an interested party in this matter.

16. However, before the application could be heard it was compromised vide a consent order dated 5th April 2018 where it ordered that: -

a) The Grant letter of Administration intestate issued to the Petitioners herein be and is hereby revoked and / or annulled.

b) Grant letters of Administration intestate be and is hereby issued to the following;-

i. George Mburu Karanja

ii. Susan Njeri Karanja

iii. Priscillah Nyambura Karanja

c) Dedan Kimani (deceased), Stephen Njoroge (deceased), Teresia Njeri Karanja, Nancy Wanjiku Karanja and Mary Wambui Gathaiya be considered as beneficiaries of the Deceased's estate.

d) Peter Njogu Njoroge be and is hereby admitted as the 2nd Interested Party to the succession cause.

e) Land parcels Naivasha / Mwachiringiri Block 2/ 1687 (7.5 acres), Naivasha / Mwachiringiri Block 2/ 1688 (7.5 acres) and Naivasha / Mwachiringiri Block 4/ 1918 (3 acres) be included as part of the deceased's Estate.

f) A Restraining order be and is hereby issued restraining any party from interfering with the aforementioned land parcels pending hearing and determination of the succession cause.

g) Costs be in the cause

17. Subsequently, the case proceeded to full hearing indicated on the court record as objector's proceedings. Objector Witness (1) John Njoroge wa Menju testified that, in support of the interested party's case that, his brother Eliud Ndungu married one of the deceased's daughter Phillis Njeri.

18. That subsequently Eliud bought land from the deceased vide an agreement dated 27th December, 1981 and that signed the agreement as a witness alongside another Mburu Karanja

19. In cross and re-examination, the witness conceded that the purchaser did not sign the agreement, but maintained that cash payment of Kshs 10,000 was made upon execution of the agreement, although he could not confirm whether the balance of the purchase price was paid. He also testified Eliud and his sister's child are buried on the subject land and that the interested party lives thereon.

20. Peter Njogu Njoroge, the interested party testified as objector witness (2) and stated that he was adopted by Eliud as his son. That the deceased sold the subject land to Eliud and although the share certificates and receipts are in the deceased's name, he has physical possession of the land. That Eliud was buried on the land and that he wants to inherit it.

21. Notably, as the case proceed on, the petitioner's learned counsel Mr Wairegi told the court on 19th May 2021, that after the consent was entered into, the 2nd interested party was to file formal objection application objecting to the issuance of the grant but there was no such application and that since there was no application, the petitioners be a liberty to file an application for confirmation of the grant. However, on 23rd May, 2022 the court allowed the interested party herein proceed with the objection

proceedings. In that case, the argument that there are no valid proceedings have no merit.

22. Be that as it were, the proceedings commenced and objector witness (1) was recalled produced the following documents: -

a) Share certificate of LR No. Naivasha/Mwichiringiri Block 4/1918;

b) Certificate of search;

c) Ballot paper in the year 2018;

d) 6 receipts

e) Sale agreement and

f) Photos

23. The petitioners' case was supported by the evidence of (RW1) George Mburu, who testified that the 2nd interested party/objector is not supposed to inherit the land in issue as it belongs to the deceased, who acquired it in the year 1987.

24. That although there is a sale agreement, the deceased could not read, write or sign the

agreement and neither is his thumb print on the agreement. That he doesn't know how the receipts produced reached the objector's possession.

25. In cross-examination, he conceded that the deceased had 2 wives. That the 1st wife had a child Phillis Njeri Ndungu who did not have any child and that she lived on the subject. He also conceded that the objector stays on the land and that Eliud, the husband of Phillis died and was buried on that land, but does not know if there are other graves on the land.

26. That his father died in the year 1991 and that he had another land which he divided among the two families.

27. He denied having knowledge of the objector but conceded that there are houses built on the subject land and that the objector Peter Njoroge stays thereon and has never been ejected therefrom. He also conceded that he did not include the sister,

Nyambura, in the list of beneficiaries neither did he include the objector herein, when he petitioned for letters of administration intestate.

28. In re-examination, the petition maintained that 2nd interested party is not Phillis's child and not deceased's dependant and that although the late Phillis stayed on the subject land but it was not transferred to her. Further the houses built on the land were built without permission.

29. At the conclusion of the hearing the parties filed their respective submissions. The objector filed submissions dated; 14th August, 2023 wherein he argued that it was not in dispute that land Parcel Naivasha/Mwichiringiri Block 4/1918 is in the name of the deceased, that Phyllis Njeri Ndungu was married to Eliud Ndungu Wamenju and lived on the subject property where they built their home.

30. He reiterated that the deceased sold the subject property to Eliud in the year 1981 for a sum of Kshs.

39,000 and produced the sale agreement dated 27th December 1981 bearing the name of the deceased and signed by the 1st petitioner/respondent and (OW1) John Njoroge Wamenju.

31. That while the sale agreement is for Marula land, (OW1) John Njoroge Wamenju testified that the subject land belonged to Mirema Suswa Farmer Company also known as Marula and produced the original share certificate in the name of; Mirema - Suswa Farmers Limited, a ballot paper for land 1918 and receipts in the name of the deceased.

32. The objector submitted that the deceased, Eliud and Phyllis lived together in the subject property until the deceased's demise in 1991. That Eliud Ndungu Wamenju and his wife Phyllis erected a semi-permanent house where they lived and erected a permanent water tank. Further, he worked the entire land and planted trees and after the death of

the deceased, Eliud and Phyllis continued staying on the land until they died.

33. That Eliud died in the year 2016 and was buried on the subject property without any objection. Further, Eliud buried his nephew on the subject property in the year 1991. That Eliud Ndungu would not have been allowed to carry out all the aforementioned developments if he had not bought the land

34. The objector submits that the documents of title were issued to Eliud Ndungu Wamenju after completing payments of the purchase price. That there is no evidence by the petitioner or anyone else complaining the original documents of title for the subject property were lost or stolen and gives credence to the objector's evidence. Furthermore, Eliud Ndungu Wamenju could not have been given the title documents by the deceased if he did not complete the sale.

35. The objector reiterated that he was adopted by Eliud and Phyllis as their son and has lived on the subject property since the year 1977. That he married while living on the subject property and lives on with his children and even built his home thereon. That he has never been asked to leave or stop working on the land which would not have been the case if Eliud Ndungu Wamenju had not properly bought the land.

36. He submitted that he has adduced sufficient evidence to warrant being awarded the subject property; Naivasha/Mwichiringiri Block 4/1918

37. However, the petitioners/respondents in submissions dated 13th September 2023, referred the court to the case of *In the Estate of Johnstone Ochwang'I Moronge (deceased) [2022] eKLR* where the court noted that, the procedure for objection proceedings are set out in section 67, 68 and 69 of the Act. Further Rule 17 of the Probate and

Administration Rules details the procedure for filing an objection to the end.

38. That when the petition was published in the Kenya Gazette, no objection was filed by the 2nd interested party by within the 30 days' period to warrant an objection being placed before the court. That a reading of Rule 17(6) of the Probate and Administration Rules, a court can only come in after an objector has filed the proper documents. That in the circumstances the procedure of placing the objection before the court herein is irregular.

39. The petitioners relied on the case of; *In Estate of Agnes Ogolas Akoth (Deceased) [2016] eKLR* where the High Court held that the objection filed after four (4) years was inordinate and unexplainable and that the grant having been issued, the objection had already been overtaken by events and the court cannot stop what has already passed and an aggrieved party could challenge it by seeking

revocation or annulment or a protest to the mode of distribution.

40. The petitioners submit that the objector lacks locus standi in this matter as he is advancing the interest of the late Mr. Njogu and is required to obtain letters of administration in respect to the estate of; Eliud Ndungu Wamenju so as to recover the land on behalf of the deceased's estate. As such he lacks the legal capacity to make any representation on behalf of Eliud Ndungu Wamenju or his estate. Furthermore, he has failed to demonstrate his interest, if any, in the deceased's estate.

41. Lastly, the petitioners argue that at the purported time of sale in 1981, the deceased did not have any property to sell as the land was not registered in the deceased name until the year 1897 as evidenced by the search certificate (exhibit 4). Consequently, the sale agreement is null and void ab initio and incapable of execution.

42. From the submission, the following issues arise for determination;

a) Whether there is valid objector's proceedings on record.

b) Whether the grant should be revoked.

43. The 1st issue is resolved by the court record, wherein it is stated herein that after the issue was raised, on 19th May 2021, by Mr Wairegi who argued that there was no formal application by the interested party objecting to the issuance of the grant, the court allowed the petitioners to file an application for confirmation of the grant.

44. However, before the grant was confirmed the issue of objection proceeding was revisited on 23rd May, 2022 and the court allowed the interested party herein to proceed with the objection proceedings. If there were no valid proceedings the case would not proceed and in any case, the petitioners

participated in the same. In that case, the argument that there is no valid proceedings has no merit.

45. As regard, the 2nd issue, the court notes that, there is no dispute that the interested party is staying on the subject land that there are houses constructed on the subject land and that Eliud Ndungu who was married to deceased's daughter; Phillis Njeri Ndungu was buried on that land. It is also in evidence that Eliud Ndungu's niece was also buried on the same land.

46. Similarly, it is not in dispute that the interested party/objector is not a biological son of the late Eliud Ndungu and Phillis Ndungu. He alleges that he was adopted by Eliud Ndungu and Phillis Njeri and has lived with them all along since he was 3 years old. However, there is no legal or such adoption.

47. The law is clear under section 107 of the Evidence Act (cap 80) laws of Kenya that he who alleges, proves. In that case the interested party has not

established any right to the deceased's assets through a succession cause as a beneficiary or dependant.

48. Be that as it were, the objector's claim is also based on the alleged sale agreement wherein the objector allege that the land was sold to Eliud Ndungu by the deceased. Several documents have been produced in support of the same. In addition, objector witness (1) testified that he witnessed the sale agreement.

49. A closer perusal of the agreement reveals that most of the documents produced are in the name of the deceased herein and note in the name the alleged purchaser, the late Eliud Ndungu. The payment receipts reveal payment made by the deceased herein to Mirera - Suswa Famers Limited. Therefore, they do not evidence purchase of the land by Eliud Ndungu from the deceased.

50. However, there is a sale agreement dated 27th December, 1981. It relates as the sale of the land in

question in consideration of Ksh39,000. It shows that the purchaser paid Kshs 10,000 to part payment with the balance to be paid later. But, notably, the agreement does not indicate the name of the purchaser is. It simply states 'myself'.

51. Further, the agreement is not signed by the seller and purchaser, but by the two witnesses, one being John Njoroge Wamenju who testified as objector's witness (1.) The agreement also states that the buyer was allowed to build and cultivate the land. The evidence produced in form of pictures show that there are house structures on the land and a grave of one Eliud Ndungu Wamenju.

52. The question that arises is this, if Eliud Ndungu Wamenju is not a biological child of the deceased herein and yet he was buried on the deceased's land, why didn't the petitioners herein protest? Further, when the structures on the land were erected, why didn't the petitioners obtain an order

to restrain the construction. Furthermore, evidence has it that, although the land had not been transferred to the alleged purchaser but all the documents relating to it were with the purchaser. How did he obtain them and have the petitioners raised any question or complained that the documents are being held unlawfully?

53. That said, on the flip chart, the sale agreement clearly indicates that the alleged purchaser paid only Ksh10,000. There was a balance of Ksh29,000. The court has not been given any evidence to prove that the said balance was ever paid. So how does the objector claim a right of ownership over a parcel of land not fully paid for.

54. Furthermore, where is the *locus standi* of the objector if the objector is not the biological child of the deceased and therefore not a beneficiary. Can he seek to revoke the grant herein. Can he even raise an objection of the summons for confirmation

of grant. He alleges he was adopted by Phillis and Eliud. Has he proved it?

55. In considered opinion of the court, it is only Phillis Njeri who is entitled in the share of the deceased's estate and any share allotted to her would then devolve upon the objector if she adopted him. Even then, to get the share of Phillis, the objector would require letters of administration or grant to represent the estate of the deceased Phillis. In the absence of the same, I find that he has no *locus standi*.

56. As regard the purported sale, it is the finding of this court that the petitioners are insincere in claiming that they are not aware of the same, no one allows a stranger in their land and construction therein and more so burial thereto. It is therefore more likely and probable the sale agreement was made and witnessed as testified by objector witness number 1 John Njoroge.

57. However, the objector has failed to prove full payment of purchase price and privity to the sale agreement, he is neither the seller or purchaser. He has no letters of administration intestate or grant to file and/or prosecute the matter on behalf of the deceased Eliud Ndungu. Consequently, he cannot be granted any orders.

58. Be that as it were, pursuant to the evidence adduced herein, it will not be in the interest of justice to allow the confirmation of the grant. If that is allowed, then the objector may be shut out if he was to acquire *locus standi*. It is in the light of the aforesaid I make the following orders;

a) If the grant is to be confirmed, the subject property herein be left in abeyance.

b) That the objector has two months within which to pursue any claim he has in the subject property and failure to do so, the property will revert to the estate for distribution.

c) Each party shall bear costs of this matter.

59. It is so ordered.

Delivered, signed and dated this 19th day of
February, 2026.

**GRACE L. NZIOKA
JUDGE**

In the presence of:

Mrs Kalau HB for Mr Wairegi for the Petitioner

Mr Gichuki for the interested party

Ms Hannah Court Assistant