



REPUBLIC OF KENYA



In re Estate of Catherine Monyenye Nyagoko (Deceased) (Succession Cause 237 of 2012) [2024] KEHC 1822 (KLR) (29 February 2024) (Ruling)

Neutral citation: [2024] KEHC 1822 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISII
SUCCESSION CAUSE 237 OF 2012
PN GICHOHI, J
FEBRUARY 29, 2024**

**IN THE MATTER OF
ANNAH CONSOLATA OTIENO APPLICANT**

RULING

1. The background of this matter is that Catherine Monyenye Nyagoko the (Deceased) had one child by the name Annah Consolata Otieno (Applicant). The Deceased also married Josephine Kerubo Kegeni under Gusii customary laws so that she could beget her sons.
2. Josephine Kerubo Kegeni begot Vincent Bosire Nyagoko (Objector) and his brother Dennis Ocharo Nyagoko. It alleged that Josephine later remarried and Catherine died on 14th April 2006 prompting the Objector to petition this Court for letters of administration . On 31st August 2016, he was issued with a Gran of letters of Administration.
3. Upon learning about it, the Petitioner filed an objection to the making of the Grant. The objection was upheld and the Grant of Letters of Administration dated 31st August 2016 revoked and a fresh Grant issued in the names of both the Applicant and the Objector herein on 16th December 2016.
4. The Applicant filed Summons dated 28th April 2022 amended on 3rd May 2023 seeking conformation of the Grant. She proposed that the only property left by the deceased being Land Parcel No. Nyaribari Chache /B/B/Boburia/5951 measuring approximately 0.38 Ha be shared equally between the two houses of the deceased.
5. However, this was objected to by the Objector herein . He told the Court that there was also another property known as Manga Settlement Scheme Plot No. 10 which was subdivided in favour of the late Lawrence Nyagoko Matara's three wives including the deceased herein. He preferred that the property be shared equally among the children of the deceased being the objector, his brother Dennis and the Applicant. That is now the subject of this ruling.



Determination

6. After hearing both parties except Dennis (Objector's bother) who could not be traced, this Court noted that without doubt or contention, the deceased herein had "married" the Objectors mother to sire sons for her. That means that both the Petitioner and the Obector together with his brother Dennis are children of the deceased for all intent and purposes.
7. It is also clear that the only property in the name of the deceased is Land Parcel No. Nyaribari Chache / B/B/Boburia/5951 measuring approximately 0.38. The property referred to by the Objector as Manga Settlement Scheme/576 being a subdivision of Plot No. 10 is registered name of Alexina Nyagoko Matara and not the deceased herein.
8. According to the Applicant, the registered owner was her father and had three wives. He allegedly subdivided it equally among his three wives while he was still alive and each settled on her own portion but the title still remains in his name to date.
9. In the circumstances, that property cannot be subject of this estate and therefore not an asset for distribution by this Court.
10. It is also noted that the Objector 's efforts to get his brother Dennis to attend Court for these proceedings has turned futile. He could not be traced in prison where the Objector alleged him to have been taken during the hearing of this matter. There was no evidence of his whereabouts or that he has a family as alleged by the Objector. Those are not really material issues in this matter.
11. The mother to Vincent and Dennis is said to have remarried. In all fairness and considering the circumstances herein, this Court is satisfied that distributing the estate equally between the two houses as opposed to equally among the three children, is not ideal. There is also no basis for seeking that the property be shared in the manner proposed by the Applicant so that she takes half of the property while the Objector and his brother share the other half.
12. In conclusion therefore, the Court makes the following orders:-
 1. The Land Parcel No. Nyaribari Chache /B/B/Boburia/5951 be and is hereby shared equally among the three children being Annah Consolata Otieno, Vincent Bosire Nyagoko and Dennis Ocharo Nyagoko.
 2. Each party to bear his own costs.

DATED, SIGNED AND DELIVERED (VIRTUALLY) AT KISHI THIS 29TH DAY OF FEBRUARY, 2024.

PATRICIA GICHOHI

JUDGE

In the presence of:

Mr. Sagwe for Applicant

Saewa/ Aphline- Court Assistant

