



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
SUCCESSION CAUSE NO. 2664 OF 2001

IN THE MATTER OF THE ESTATE OF EVANSON MUREITHI KIBUI

(DECEASED)

JUDGMENT

Mary Wanja Kibui filed the application on 9th April 2003 seeking for the revocation or annulment of the grant issued on 28th December 2001 to Amos Njau Mureithi and Rachel Wanjiku Mureithi both son and daughter of the late Evanson Mureithi Kibui the deceased herein. The Objector is the daughter in law of the deceased. The Objector's husband Arthur Kibui Mureithi passed away on 15th April 2001. The Objector's complaint is that he late husband was entitled to his father's estate in equal shares with the other beneficiaries but the petitioners have left the Objector and her children out of the proposed distribution and also in the list of deceased beneficiaries.

When the petitioners applied for the Letters of Administration, they indicated the following as the survivors of the deceased:

1. Peris Njeri Mureithi – widow
2. Rachel Wanjiku Mureithi – daughter
3. Joseph Murimi Mureithi – son
4. Eunice Nungari Mureithi – daughter
5. James Mungai Mureithi – son
6. Lucy Nyokabi - daughter

It would appear that the deceased following children were not included as the following were left out:

1. Mary Wanja Kibui (Objector widow of Aurthur Mureithi Kibui deceased first born son).
2. Amos Njau Mureithi – second petitioner
3. Catherine Njeri (daughter of Phylis Wanjiru deceased daughter)
4. Peris Njeri (daughter of Sera Nduta (deceased daughter)
5. Evanson Ndera Mureithi)
6. John Ndungu Mureithi) both mentally disabled

According to the certificate of grant that was issued on 5th November, 2003. The Petitioners are supposed to be registered as proprietors of all the deceased Assets in equal shares for themselves and for the other beneficiaries.

This state of affairs seems to have prompted the present application. The Petitioners seems to have filed another Schedule of distribution attached to the application dated 16th February, 2004, whereby they have attempted to distribute the deceased estate to all the beneficiaries. The deceased left several Assets which are in form of Agricultural land in Kiambu, Ngong, Maela and commercial plots in Kabete and Makadara, although the full particulars of the Makadara plot are not known. The Objector argued that the deceased Assets should be distributed amongst all the beneficiaries equally.

I have given due consideration to the evidence and the material that was placed before me. This is a complex matter in attempting to come up with an equitable distribution of the deceased estate amongst beneficiaries who have varied needs and properties that are of varied values. According to the Petitioners they contend that they have not left out the Objector's husband as they allocated the following properties to his sons, from the deceased main property being a farm in Kiambu known as Kabete/L.Kabete 570 measuring approximately 4.55 Ha out of which the Objectors sons have been allocated portions measuring 0.324 Hectares each. From the list of the proposed Schedule submitted for rectification Patrick Kanyiri and Evanson Kibui are allocated Plot No. Kabete/Kabete/2168 and 2167 respectively.

Evanson Kibui the Objector's son also testified in court in support of the Petitioner and confirmed that he is happy with the distribution and that he was consulted by the deceased family when they held deliberations on how to distribute deceased estate. The Objector's sons are also allocated a land in Maela/Ndibibi/2/39 which is about 9 acres. Apart from the two properties, the Objector's husband was the registered owner of a plot No. Kabete/Lower Kabete 1029 situate at Kingeero in Kabete which was transferred to him by his father before he died. The Objector's husband was survived by the Objector, a daughter and the two sons. The proposed distribution does not seem to have taken into account the Objector's life interest and also the interest of her daughter, Susan Njeri Kibui. According to the Petitioners, Susan Njeri is married and therefore should not be allocated a share of her father's estate. With respect this position is not supported by the Law of Succession. In any event Susan Njeri has sworn an affidavit in support of the mother's objection whereby she claims that she is not married. I have also carefully considered the proposed schedule of distribution alongside the valuation report that was presented by Munyoli and Associates for the objector. Parcel No. Kabete/Lower Kabete/287 was transferred to the widow of the deceased during the deceased lifetime therefore it does not form part of this deceased estate. This explains why the widow of the deceased is only getting commercial plots and no agricultural land. It would appear that the deceased distributed and transferred his parcel of land at Kabete to some of the children, namely,

Objector's husband

Joseph Murimi

Amos Njau Mureithi

Joseph Mwaura and

Rachel Murimi

There was a balance of four (4) plots which the petitioners distributed to the other beneficiaries. It is my humble view based on the above evidence that the deceased properties in respect of the land in Kabete, Kiambu and Maela are fairly distributed. As regards the property in Ngong, which is a total of Sixteen (16) acres, I am of the view that the Objector's husband should have been allocated at least 1 acre considering that there are a total of eleven beneficiaries. I say one acre because, they were allocated the lion share of the property in Maela. I have given due consideration to the distribution for the Commercial plots which basically are to be held in Trust of the mentally disabled beneficiaries and the rest to the widow. This distribution is fair because the mentally disabled beneficiaries and the deceased widow who

is elderly need a lot of care and perhaps a lot of resources to ensure that their needs are attended to, they cannot do anything to improve themselves and therefore their special needs should be taken into account. Due to the fact that the objector as the survivor of the deceased son and her daughter have not been taken into account in the schedule of distribution, I am constrained to invoke the inherent power of this court under Rule 73 of the P & A rules and interfere with the proposed schedule in order to remedy the mistake and for ends of justice.

Having regard to all the above issues, I find that there is no basis for revoking the grant, however the schedule of distribution should reflect the following:

1) The distribution in Kabete/L Kabete 570 should be registered as proposed that is:

Evanson Mureithi Kibui 2167)

Patrick Kanyiri Kibui 2168) Sons of Arthur Mureithi Kibui

I have taken into account that these titles have almost been issued and there is no point in interfering with them. It may not be convenient to the parties to resubmit the applications any way.

2) The distribution of Maela/Ndabibi Block 2/39 should be registered in favour of Mary Wangui Kibui widow of Arthur Mureithi Kibui for life and therefore in favour of her 3 children in equal shares as follows:

Susan Njeri

Evanson Mureithi

Kibui Patrick Kanyiri Kibui

3) One acre to be excised from Ngong/Ngong/24829 to be registered in favour of the widow for life and in Trust of her 3 children in equal shares.

4) The above, taken into account with the plot No. Kabete/Kabete 1029 which is already in the name of the objector's deceased husband, in my humble view should project a fair if not an equitable distribution and allocation of shares of the deceased estate on behalf of the deceased son.

The administrator should therefore present a revised schedule of distribution on or before 30 days from the date hereof.

It is so ordered.

Judgment read and signed on 29th October 2004

MARTHA KOOME

JUDGE