



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

FAMILY DIVISION

SUCCESSION CAUSE NO. 527 OF 1981

IN THE MATTER OF THE ESTATE OF MBIYU KOINANGE - (DECEASED)

JOYCE NJERI NJUNU.....1ST APPLICANT

LENNAH WANJIKU KOINANGE.....2ND APPLICANT

VERSUS

DAVID NJUNU KOINANGE.....1ST RESPONDENT

MARGARET NJERI MBIYU.....2ND RESPONDENT

EDDAH WANJIRU MBIYU.....3RD RESPONDENT

RULING

1. The deceased Peter Mbiyu Koinange died intestate on 3rd September 1981. During his life he had four wives: Loise Njeri Mbiyu, Rith Damaris Wambui Mbiyu, Margaret Njeri Mbiyu and Eddah Wanjiru Mbiyu, in that order. Loise and Rith died in 1966 and 2010, respectively. Each of the two left children.
2. The deceased left substantial property. After nearly 40 years of continued dispute, the estate of the deceased was distributed in a judgment of this court delivered on 7th May 2020.
3. The administrators of the estate of the deceased are David Njunu Koinange (representing the 1st house), Margaret Njeri Mbiyu (representing the 3rd house), Eddah Wanjiru Mbiyu (representing the 4th house) and David Waiganjo Koinange (representing the 2nd house). A joint certificate of confirmation of the grant of letters of administration intestate was issued to them. They have the responsibility to distribute the estate of the deceased to the indicated beneficiaries.
4. David Waiganjo Koinange died on 10th September 2020 before the estate was distributed. The process of distribution cannot be undertaken until the court appoints a member of the 2nd house to step in his shoes as an administrator. The appointment of such a person is the issue to be determined by the two applications at hand, one dated 3rd February 2021 by Joyce Njeri Njunu (a widow of the late Isaac Njunu Koinange who was a son in the 2nd house of the deceased) and another dated 17th February 2021 by Lennah Wanjiku Koinange (the only surviving child of the 2nd house). Both applications seek the appointment of Lennah Wanjiku Koinange to substitute the late David Waiganjo Koinange as an administrator to represent the deceased's 2nd house. Joyce Njeri Njunu is represented by Mr Peter Munge and Lennah Wanjiku Koinange by Mrs Oduol.
5. The application by Lennah Wanjiku Koinange was supported by all the members of the 2nd house, except Barbara Wambui Koinange who is the deceased's granddaughter (daughter of the deceased's late daughter Florence Wanjiku Koinange). She is represented by Mr Kamaara. Her case is that Lennah Wanjiku Koinange treats her as stranger in the family. She does not believe that Lennah Wanjiku Koinange will transmit to her what she is entitled to.
6. The other opposition came from Eddah Wanjiru Mbiyu and David Njunu Koinange. They state that Lennah Wanjiku Koinange is not morally fit to administer the estate because she has continued to obtain money from third parties in respect of Closeburn Estate using the claim that she owns the Estate. Secondly, she committed fraud against the estate by transferring 80 acres of Closeburn Estate to herself.

Thirdly, that she has active litigation against some of the administrators and therefore it would be difficult for her to join them in the administration of the estate. Lastly, there was a ruling delivered on 19th November 2009 which determined that she was not suitable to administer the estate.

7. Lennah Wanjiku Koinange swore a further affidavit to explain that the litigation that there was between her and the administrators of the estate has been finalised, and therefore she is available and able to join in the administration of the estate. She admits that she was on 26th June 2019 found by this court to have transferred 35.85 hectares of Closeburn Estate to herself when the cause was proceeding, and when she did not have the authority of the court. She says that she accepted the verdict and returned the parcel. She also admitted that while the case was proceeding she sold 2 acres of Closeburn Estate to Monica Wambui Kinuthia (represented by Prof. Sylvia King'ara) also without the authority of the court. She has promised to give the 2 acres to Monica from her entitlement in the estate. She stated that she was the only beneficiary who has intermeddled with the estate. Indeed, in the judgment of 7th May 2020 this court found as a fact that the administrators and some of the beneficiaries had over the years extensively intermeddled with the estate of the deceased.

8. On the question of litigation between Lennah Wanjiku Koinange and the administrators of the estate, she stated that her and her late brother David Waiganjo Koinange had sued Eddah Wanjiru Mbiyu in **NBI ELC No. 1018/2012** over LR No. 209/9099 that belonged to a company in which the deceased had interest. She stated that she has since lost interest in the case. She has also lost interest in **NBI ELC/JR 19 of 2020** in which the company had sued her and her late brother. She pointed out that a co-administrator Margaret Njeri Mbiyu had sued Eddah Wanjiru Mbiyu in **NBI ELC No. 545 of 2011** over the same estate. The litigation did not stop the two from continuing to be administrators of the estate of the deceased. Her case was that the issue of suits was not peculiar to her.

9. Reference was made to **HCCC No. 709 of 2004** which was consolidated with **HCCC No. 111 of 2008**. Lennah Wanjiku Koinange stated that judgment was delivered on 17th August 2009. There was an appeal filed which was pending. There was **Nakuru HCCC No. 350 of 2008** between her and the administrators over LR No. 8669/2 Mau Narok. The case was determined and the property is now being managed by the administrators after it was found to belong to the estate. According to her, therefore, there are no outstanding suits between her and the administrators.

10. These suits are important because they were the reason why the court in its ruling of 19th November 2009 found that Lennah Wanjiku Koinange was conflicted and not suitable to join in the administration to replace her then ailing mother Rith Damaris Wambui Mbiyu. This ruling has to be put in context and perspective. Both Lennah Wanjiku Koinange and her brother David Waiganjo Koinange had applied to replace their sick mother in the administration of the estate of the deceased. When the court found Lennah Wanjiku Koinange not suitable because of the ongoing cases, it was preferring David Waiganjo Koinange to her. He was preferred to join in the administration. The present position is that David Waiganjo Koinange has died, and Lennah Wanjiku Koinange is the only surviving child in their house. The house comprises the deceased's daughters in-law and grandchildren. All, except Barbara, have consented to Lennah Wanjiku Koinange joining in the administration to represent the 2nd house.

11. Members of the 1st, 3rd and 4th houses cannot pick for the 2nd house who should represent it in the administration. Secondly, the administration of the estate has with it duties and responsibilities under **sections 82 and 83 of the Law of Succession Act (Cap. 160)**. Under normal circumstances, one has to be willing to be appointed an administrator. This is because he/she has to ultimately account to the beneficiaries and to the court on how the administration of the estate has been done. Secondly, the business of appointing an administrator of an estate of a deceased person belongs to the court, and is not shared with beneficiaries.

12. I had earlier found that neither Eddah Wanjiru Mbiyu nor David Njunu Koinange can claim to have been clean in the way the estate of the deceased has been dealt with since he died.

13. On the issue of the ruling of 19th November 2009, the court observed that Lennah Wanjiku Koinange (who enjoyed equal right with David Waiganjo Koinange) was to be kept out of the administration of the estate of the deceased –

“until all pending litigation between her and or entities she has interests on have ben finally determined”

I am satisfied that the litigation she was engaged in against the administrators has substantially been determined. The court reserved the right to review its decision regarding her appointment as an administrator of the estate of the deceased when circumstances are found to have demonstrably changed.

14. Lennah Wanjiku Koinange defrauded the estate of 80 acres of land. However, the land has been recovered. She has agreed to transfer the 2 acres she sold to Monica Wambui Kinuthia. She will give her from her entitlement in Closeburn Estate.

15. Regarding the objection by Barbara Wambui Koinange, I note that this whole case showed me that there was so much anger in this family. The main reason why this dispute took this long to resolve was because of the animosity there exists in the family. So that, if Barbara Wambui Koinange and Lennah Wanjiku Koinange do not see eye to eye it is not peculiar to them. The good news is that the estate has now been shared, and Barbara Wambui Koinange knows what is due to her. The administrators have a statutory responsibility to make sure she gets her stated share. The law commands that the administrators will ultimately account to the court if they fail in this responsibility.

16. Lastly, it is up to this court under **section 66 of the Act** to appoint a representative from the 2nd house to join in the administration of the estate of the deceased. This role of the court was emphasised in the case of **In re Estate of Tharachiu Marete (Deceased) [2019]eKLR**. This house was hit by the death of their first administrator (Rith Damaris Wambui Mbiyu) and now their next administrator (David Waiganjo Koinange). But life has to go on.

17. In conclusion, I allow the two applications and appoint Lennah Wanjiku Koinange alias Lennah Catherine Koinange to replace the late

David Waiganjo Koinange as the administrator representing the 2nd house in the estate of the deceased Mbiyu Koinange.

18. The grant issued on 19th November 2009 and confirmed on 7th May 2020 shall be rectified and/or amended to reflect this order.

19. I make no order as to costs.

DATED AND DELIVERED AT NAIROBI THIS 13TH DAY OF APRIL 2021.

A.O. MUCHELULE

JUDGE