



**In re Estate of Muindi Nginga (Deceased) (Succession Cause
781 of 2015) [2024] KEHC 13460 (KLR) (25 October 2024) (Judgment)**

Neutral citation: [2024] KEHC 13460 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MACHAKOS
SUCCESSION CAUSE 781 OF 2015**

MW MUIGAI, J

OCTOBER 25, 2024

IN THE MATTER OF THE ESTATE OF MUINDI NGINGA (DECEASED)

BETWEEN

SABINA M MUSILA 1ST PETITIONER

SIMON N MUINDI 2ND PETITIONER

URBANUS KIOKO MULI 3RD PETITIONER

AND

URBANUS KIOKO MULI OBJECTOR

JUDGMENT

1. The deceased died on 3.09.1993 and Petition for letters of administration was filed on 10.12.2014 by Sabina Mwongeli Musila ,Simon Musyimi Muindi and Urbanus Kioko Muli in their capacity as daughter in law, son and grandson to the deceased respectively who were also listed as the survivors of the deceased.
2. The property known as Land Parcel no Mbiuni/Kabaa/101 was listed as the estate property.
3. The grant of letters of administration intestate were issued on 4.05.2015 to Sabina Mwongeli Musila ,Simon Musyimi Muindi and Urbanus Kioko Muli as Administrators of deceased's estate.

Summons For Confirmation Of Grant

4. Summons for confirmation of grant were filed on 24.05.2017 supported by the affidavit of Sabina Mwongeli Musila indicating the estate property to be shared as follows;
 - a. Sabina Mwongeli Musila 1/3
 - b. Simon Musyimi Muindi 1/3



- c. Urbanus Kioko Muli 1/3 to hold in trust for himself and other beneficiaries of his grandfather.

Affidavit Of Protest

5. The 3rd Administrator filed Protest on 29.06.2018 and indicated that the summons for confirmation were applied for without his knowledge or consent and that he objected to the mode of distribution as part of the land was sold to his father on 27.01.1976 and therefore the deceased estate is indebted. In addition, that the clan met on 8.03.1987 in the presence of the deceased herein and sub divided the said parcel of land to all families and his father was given the land he had purchased.
6. Further, that on 3.09.2003, his grandmother Nzilani Muindi called family members to order and sub divided the land amongst her three sons and this was witnessed by the area chief, assistant chief and the family headman. He deposed that his father's family should be given the land he purchased from his grandfather so as not to lose his right and interest by virtue of the purchase.
7. The protest was disposed off by viva voce evidence.

Hearing

8. OBW-1 was Urbanus Kioko who relied on his affidavit of protest and the annexures thereto and contended that the portion of land that was bought by his father should be isolated. He stated that on 1976 the deceased herein divided the property into four pieces, three to his three sons and left one portion to himself and that upon demise in 2003 their grandmother sub divided the portion left by their late grandfather into three portions and her sons, one of them was their father.
9. He stated that each family has a large piece and a small piece and the suggestion to have the properties shared equally was not tenable because some beneficiaries have developed their portions and will stand to be prejudiced. He suggested that the portions be surveyed to confirm the sizes and ensure each beneficiary retains the portion they have had in possession and the beneficiaries with excess portions must cede the same. He indicated that the boundaries were still intact.
10. Upon cross examination he stated that his father's portion should not be put as part of the sharing the property. He stated that his grandfather signed for receipt of part payment but he did not see signatures for the rest of the payments. He stated that he did not have the agreement between his grandfather and father over the portion allegedly sold.
11. OBW-2 was Musyimi Muindi stated that Muindi Nginge was his father and that they are three sons of the deceased. He stated that the oldest son Michael Muli bought land from his parents, he was not sure of the size, could not recall the year or the amount. He stated that his parents called them and divided the rest of the land to the three sons, Michael Muli, Muli Muindi and Musyimi Muindi. He stated that in 2003, his mother Nzilani Muindi had a meeting and the clan members were called and they attended. He stated that the remainder of the property was shared and divided to the parties.

Petitioner's Case

12. PW1 was Benard Ndilivu Kasyoki from Mbiuni who stated that he knew the deceased herein and the family, the Petitioner called Sabina. He adopted his statement dated 29/01/2019. He stated that Sabina is cultivating another land which she bought and was not given any land by the deceased's family.
13. Upon Cross examination, she stated that Sabina was not given any land from the deceased's estate.
14. PW2 was Sabina from Mbiuni stated that the deceased was her father in law, the father to her husband Raymond Musila Muindi (dcd)She adopted her statement in which she stated that she was married



to Musila Muindi (deceased) who was the son to the late Muindi Nginga in 1972 and in 1973, the deceased herein divided his parcel of land number Kabaa/Mbiuni/101 into 4 equal parts. She stated that three equal parts were given to his three sons; Musila Muindi, Muli Muindi and Musyimi Muindi and the deceased remained with the 4th portion which he built a homestead on one part and cultivated on the other part.

15. She stated that upon the death of the deceased, the wife, Nzilani Muindi(deceased) remained on the land until 2013 when she called out all the family members to sub divide the portion she was occupying equally among her three sons. The family of Musila Muindi was not represented during the meeting on subdivision due to other engagements.
16. It was contended that the family of Muli Muindi took advantage of that situation and occupied both his portion and that given to Musila Muindi. That her husband's share was taken away by the husband's family, she stated that she lives and farms in another portion. She further stated that the objector has remained adamant despised discussions and insisted that he must have a larger share without reasonably supporting his claim.
17. Upon cross examination she stated that it is not true that they had had their share of the estate of the deceased.

Submissions

18. The objector filed submissions and reiterated his evidence. He stated that his father entered into an agreement with the deceased herein on 27.01.1976 and bought a portion of land as per the agreement filed. Ten years later, Muindi Nginga divided the portion of land into four among his children and himself as per the agreement marked UKM2. In 2003, Nzilani Muindi subdivided the portion of Muindi Nginga into three among his father, Sabina's husband, Raymond Musila Muindi and her son Simon Musyimi Muindi.
19. It was submitted that the protestor's father divided his portion among his three wives. He died in 1995 and the protestor inherited his parcel of land, Sabina Mwangeli became the owner of her husband, Raymond Musila Muindi's property.
20. In addition, he stated that all boundaries still remain and can be accessed, that all the portions can be measured and if not equal, the adjustment can be made on the boundaries.
21. The 1st Petitioner submitted that no document was marked as exhibits to support the purchase of the land in 1976, no document shows the size that was purchased purchase price is not known, the protestor did not exhibit any family understanding as claimed in his evidence. Further that the protestor stated that the land was purchased in 1976 but there was no good reason why the purchaser did not take up the land until 2003 when Nzilani Muindi gave it to the protestor and lastly, that the protestor did not call any witness who was present during the sale and purchase of land. The court was urged to sub divide the land into 3 equal portions as prayed.

Determination

22. I have considered the Summons for Confirmation of grant, the Affidavit of Protest, the evidence on record and the submissions of the parties and find that the issues for determination are as follows;
 - a. Whether the deceased estate should be distributed?



Who should bear the costs of the suit

23. In the instant matter, distribution of the estate will be implemented upon determination of the Court on the mode of distribution in compliance with Section 38, 55 & 71 of LSA.
24. The rights of surviving children in an intestate estate prescribe equal or equitable distribution of the estate taking into account the circumstances of each family/case. *In re Estate of Prisca Ong'ayo Nande (Deceased)* (Succession Cause 836 of 2013) [2020]
In re Estate of In re Estate of Wilfred Kihara Kariuki (deceased) (deceased) (Succession Cause 1001 of 1993) [2018] KEHC 4872 (KLR)
In re Estate of Julius Ndubi Javan (Deceased) (Succession Cause 720 of 2013) [2018]
25. In the instant case, I note that from the viva voce evidence, both the Objector witnesses and the Petitioner's witness agree that the suit property Land Parcel no Mbiuni/Kabaa/101 was divided in 1976 into four portions, three to the three sons of the deceased and 1 portion left and was being used by the deceased herein and his wife to father of the Applicants/Protestor.
26. It is also not in contention that the sons of the deceased are (Raymond) Musila Muindi (dcd), Muli Muindi and Musyimi Muindi and Sabina Mwangeli who is the wife/widow of Raymond Musila Muindi did not contest the protest in so far the deceased's husband divided the property into 4 portions, each portion to his sons and remaining portion to his wife/widow the deceased herein.
27. The bone of contention is from the Protestor's view, his late father purchased some land from his grandfather but no valid duly executed agreement was presented to confirm the said sale and in any case matters regarding sale ownership and title to land is within the purview of ELC as provided by Article 162 (2) CoK 2010 & Section 13 of Environment & *Land Act*.
28. In addition, the court has confirmed through the search document is dated 15.10.2014 that the title deed of Mbiuni/Kabaa/101 is in the name of Muindi Nginga, the deceased herein, registered on 7.7.1977.
29. The Court has seen a sale agreement dated 27.11.76 that was witnessed by S.Lonzi, Kasuki Kiiti, Mulwa Ngundo, Musau Kinyae and had the following officials present; Simeon Mbindyo Mulinga, Paul Manthi and Kilonzo Musyimi but is contested on its validity. It is curious the issue of sale of land was not settled during the grandfather's lifetime better still the deceased's herein's lifetime almost 40 years ago.
30. The Court has also seen Minutes of a meeting of 8.3.1987 that indicate that the land was subdivided amongst the three sons on Muindi Nginga; Michael Muli, Musila Muindi and Musyimi Muindi and a portion remained for Muindi Nginga for cultivating. This statement was corroborated by PW2 and OBW1.
31. There are Minutes for 3/9/2003 that indicate that Nzilani Muindi the deceased herein assembled all the children to subdivide the remaining portion and two houses were present; Michael Muli and Simon Musyimi, the family of Musila Muindi did not come. This corroborates the statement by PW2 that her husband's portion was taken by the family of the deceased who took advantage of the situation. The Minutes indicate that Nzilani Muindi divided the land into three equal portions, it stated that

“ the land had been sold by Muindi Nginga and money refunded and he sold to Michael Mulu on 10/09/003.



Sabina Musila called the clan and took the land from the river Musyimi at the centre and Michael Muli above the road.”

32. From the above outline this Court shall adopt the uncontested and agreed subdivision of the suit property by the deceased’s husband, of the 4 portions as the family members agreed to the demarcations have developed and occupied their respective portions and there is no dispute. Secondly, this court is engaged in administration and distribution of the deceased’s portion only and not her late husband’s.

Disposition

29. At this juncture, I am inclined to agree with the Protestor on the distribution of deceased’s portion as per her wishes instructions and division during her lifetime to the 3 parties and issue the following orders;
- a. The beneficiaries of the estate are; Sabina M Musila, Simon N Muindi And Urbanus Kioko Muli who will hold the properties in trust for their families
 - b. The beneficiaries of the estate shall be entitled to three equal portions of deceased’s division as per Minutes of 2003
 - c. The portion of Sabina M Musila taken by the rest of the family be reallocated to her and family of deceased’s son Raymond Musila (deceased)
 - d. The Estate shall be surveyed to confirm the status and boundaries of the estate property and a report be filed in court within 90 days.
 - e. Each party will bear their own costs.

It is so ordered.

JUDGMENT DELIVERED DATED & SIGNED IN OPEN COURT ON 25/10/2024 IN MACHAKOS HIGH COURT VIRTUAL/PHYSICAL CONFERENCE.

M.W. MUIGAI

JUDGE

