



**In re Estate of Mutea Rimberia (Deceased) (Probate & Administration
483 of 2015) [2022] KEHC 12534 (KLR) (4 August 2022) (Ruling)**

Neutral citation: [2022] KEHC 12534 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
PROBATE & ADMINISTRATION 483 OF 2015
EM MURIITHI, J
AUGUST 4, 2022**

BETWEEN

GM'M 1ST ADMINISTRATOR

DAVID KIRAMANA M'MUTEA 2ND ADMINISTRATOR

AND

JOYCE DOUGLAS PROTESTOR

RULING

1. The duty of the succession court on the hearing of an application for confirmation of grant, pursuant to section 71 of the *Law of Succession Act*, is set out in rule 41 of the *Probate and Administration Rules* (in relevant parts) as follows:
 - (1) At the hearing of the application for confirmation the court shall first read out in the language or respective languages in which they appear the application, the grant, the affidavits and any written protests which have been filed and shall then hear the applicant and each protester and any other person interested, whether such persons appear personally or by advocate or by a representative.”
2. By an application dated August 24, 2020 the administrators GM'M and David Kiramana M'Mutea pray for confirmation of the Grant herein made to the on June 8, 2020 for distribution of the deceased estate as set out in paragraph 3 of their supporting affidavit sworn on June 18, 2020, as follows:
 - a. Joyce Dagrass 1.13 acres
 - b. Gradys Kanagi Paul 1.62 acres
 - c. GM'M 1.00 acres
 - d. David Kiamana Mutea 1.00 acres



(sic)

3. The asset is parcel of land Nyaki/Mulanthankari/ 425 measuring 2 ha (2.47x2=4.94acres).
4. According to this sharing the total acreage in Nyaki/Mulanthankari/ 425 is (1.13+1.62+ 1.00+1.00) = 4.75 acres. The proposed distribution is consented to by the 2nd, 3rd and 4th beneficiaries who signed a consent therefor dated June 18, 2020. The protestor, Joyce Douglas, filed three affidavits in opposition to the proposed distribution, respectively, Affidavit of Protest dated February 10, 2020; Affidavit of Protest and Proposed Distribution sworn on 10th October 2021; and Further Affidavit of Protest and Proposed Distribution sworn July 20, 2022. The protestor also testified before the court on November 18, 2022 and was cross-examined by counsel for the administrators.
5. The cumulative effect of the affidavits and oral testimony before the court is the averment that (1) the deceased had 8 children, the females of whom who were all married had no claim to the estate;(2) the deceased had two parcels of land the Nyaki/Mulanthankari/425 (2ha) and Nyaki/Mulathankari/239 (0.72 ha) and that the deceased had shown his sons where to settle on the said parcels of land and each son had developed their shares and building permanent structures. Under the arrangement, the son Paul who was registered owner upon trust of the Nyaki/Mulathankari/239 would give 1/2 acre thereof to Titus Thurania who had benefitted from inheritance of the deceased's brother, and parcel "would remain the way it is with Douglas Mutea having 1.75 acres, Paul M'Muremera 1.0 acres, GM 1.0 acres and David Kiramana 1.0 acres.". In her proposed distribution, the protestor who represents the estate of Douglas Mutea Dec'd testified that –

“I wish that the land at Kaaga be divided into- G 1 acre, Kiramana 1acre Gladys Kangai (widow of Paul M'Muremera) 1 acre and the balance wot me. Thurania does not get a portion at Kaaga because he has another shamba. Gladys also has another shamba. Kiramana is the one who takes the land belonging to G who does not have children or wife. G is alive but he is mentally challenged.”

6. On cross-examination, the protestor explained that she was opposed to equal distribution of the estate asset as Paul and Thurania, the other brothers to her deceased husband had inherited other lands elsewhere, and it would not be fair to her husband. She said here proposed distribution was based on what her father-in-law had said as to how the land was to be share giving a bigger share to her husband Douglas as he “is the one who to follow up on the land and had assisted including educating the Kiramana and G when they were children. That is why my father gave him a bigger portion which was fenced and we planted trees.” She conceded that there was no will of the deceased.
7. By Notice in a letter dated November 11, 2021 copied to the deputy registrar of the court, the protestor sought to cross-examine the administrators on their affidavit. However, when the matter came for further hearing on June 9, 2022, counsel for the administrators indicated that they wished to rely on the documents already filed, and that they did not wish to file any submissions on the matter.
8. On a balance of probability, the court finds that it is more likely than not that the deceased herein had shown his sons where on his two parcels of land to settle and that the sons had settled and developed their respective portions and on account of educating the beneficiaries G and Kiramana the deceased may have given a bigger share of the estate asset to the beneficiary under whom the protestor claims. Indeed, the court has seen the search on Nyaki/Mulanthankari/239 (0.72 ha) which is registered in the name of Muremera Mutea on 25/10/1967. The statement of the protestor that Thurania had another portion of land at Mulanthankari where he had been buried was despite opportunity to call evidence not rebutted by the administrators who chose not to testify, or be cross-examined on their supporting affidavit or file any further affidavits, as they could have.



9. The court would, accordingly, find that the protestor's opposition to the proposed distribution is valid, having regard under section 42 of the Law of Succession Act to benefits already bestowed by the deceased on the beneficiaries Paul Muremera and Titus Thurania during the life of the deceased when he pointed out the sharing of his estate to his children. The court finds that equal distribution of the one asset of the estate would, in the circumstances of this case, be unfair to the protestor, as some of the beneficiaries have already benefited from gifts *inter vivos*.

Orders

10. Consequently, the court makes the following orders:

1. The court adopts the scheme of distribution proposed by the protestor and makes an order for the distribution of the estate asset Nyaki/Mulathankari/425 as follows:
 - i. Paul M'Muremera M'Mutea (deceased) represented by Gladys Kangai Paul, 1.00acre;
 - ii. Douglas Kirukuthi Mutea (deceased) represented by Joyce Douglas, 1.75 acres.
 - iii. GM, 1.00acre;
 - iv. David Kiramana, 1.00acre.
2. The letters of administration intestate made on June 8, 2021 to the administrators herein is confirmed for the distribution of the estate as set out above.
3. The administrators shall effect the distribution herein above made within six months in accordance with the law.
4. In the distribution of the estate, the boundary demarcation shall as much as practicable align to the portions of the land upon which the beneficiaries have settled. Liberty to apply.
5. Each party shall bear their own costs.

Order accordingly.

DATED AND DELIVERED THIS 4TH DAY OF AUGUST 2022.

EDWARD M MURIITHI

JUDGE

APPEARANCES:

M/S Kinyanjui, Kirimi & Co Advocates for the protestor.

M/S A G Riungu & Co Advocates for the administrators.

