



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

(CORAM: *CHERERE-J*)

REPUBLIC OF KENYA

SUCCESSION CAUSE NO 181 OF 2015

IN THE MATTER OF THE ESTATE OF ZAKAYO M'RITARI M'RWITO (DECEASED)

BETWEEN

DORCUS KENDI.....1ST APPLICANT

GLADYS KARAMBU.....2ND APPLICANT

DUNCAN MWONGERA.....3RD APPLICANT

AND

ALICE MUKOMWENE.....1ST ADMINISTRATOR/RESPONDENT

MOSES NTARANGWI.....1ST ADMINISTRATOR/RESPONDENT

RULING

Introduction

1. ZAKAYO M'RITARI M'RWITO (DECEASED) died sometimes on 21st August, 1998.
2. His estate comprises:

LR.NO. NTIMA/NTAKIRA/2203

3. Deceased' widow CHARITY MUTHONI predeceased him. Their children were:

1. Alice Mukomwene

2. Moses Ntarangwi

3. Janet Mpinda (deceased)

4. Joseph Muthomi Rithara

4. By a consent recorded in court on 13th December, 2016, the administrators herein were appointed to jointly administer the deceased's estate and the 1st Administrator was directed to file an application for confirmation of the grant.

5. Prior to 13th December, 2016, the 1st Administrator had by an application dated 17th February, 2016 filed on 18th February, 2018 applied to distribute the estate of the deceased as follows:

LR.NO. NTIMA/NTAKIRA/2203 equally to

1. Erick Mwenda Miriti	Equally
2. Roselyn Kireriah	

LR.NO. KIIRUA/NKANDO/97

Alice Mukomwene	8 acres
Joseph Muthomi Rithara	8 acres
Moses Ntarangwi	Balance

Summons

6. The Applicants who are children of the late **Janet Mpinda** who is daughter of the deceased have by a chamber summons dated 24th August, 2020 filed on 16th September, 2020 sought orders to be enjoined to this cause as interested parties.

7. The summons is supported by an affidavit sworn by the 1st Applicant on 24th August, 2020. She avers that the Applicants are in use and occupation of **LR.NO. NTIMA/NTAKIRA/2203** and that the same is not available for distribution the same having been bequeathed to their mother **Janet Mpinda (deceased)**.

8. In response to the Protest, the 1st Administrator filed a replying affidavit sworn on 09th October, 2020. She avers that **Joseph Muthomi Rithara** who was neither married nor blessed with children has since died. Whereas she acknowledges that the Applicants are children of her late sister **Janet Mpinda**, she disputes that they are in use and occupation of **LR.NO. NTIMA/NTAKIRA/2203**. The 1st Respondent additionally avers that Applicants are married and are therefore not entitled to deceased's estate.

9. I have carefully considered the summons in the light of the affidavits and submissions on record. It is not disputed that the Applicants who are children of deceased's daughter **Janet Mpinda (deceased)** have not been provided for in the application for confirmation of grant dated 17th February, 2016 which was filed on 18th February, 2018

10. There is no doubt that the Applicants who represent their deceased mother are interested parties in deceased's estate with a right or expectancy in the estate comparable to those of the deceased's children.

11. Consequently, the chamber summons dated 24th August, 2020 and filed on 16th September, 2020 is found to be meritorious. It is therefore hereby ordered:

1. The Applicants DORCUS KENDI, GLADYS KARAMBU and DUNCAN MWONGERA are enjoined to this cause as interested parties

2. The Administrators Alice Mukomwene and Moses Ntarangwi are hereby directed to identify respective shares of each of the beneficiaries to the estate and apply for confirmation of grant within 30 days from the date hereof

3. Any party that will be dissatisfied with the mode of distribution proposed by the Administrators will be at liberty to file a protest

4. Pending the confirmation of the grant, a preservation order of LR.NO. NTIMA/NTAKIRA/2203 is hereby issued and the parties are hereby restrained from in any way intermeddling with the estate

5. The Administrators are directed to file evidence to proof that Joseph Muthomi Rithara is deceased and was neither married nor blessed with children

6. Mention on 20th July, 2021 to confirm compliance with order (2), (3) and (5) above and for further orders and/or directions

7. Costs shall be borne by the 1st Administrator/Respondent

DATED AT MERU THIS 29TH DAY OF APRIL,2021

T. W. CHERERE

JUDGE

Court Assistant - Morris Kinoti

For Applicants - N/A

For 1st Administrator - N/A