



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MERU
(CORAM: CHERERE-J)
SUCCESSION CAUSE NO.582 OF 2015
IN THE MATTER OF THE ESTATE OF MBUUTHA MAITI (DECEASED)
IN THE MATTER OF INCLUSION AS BENEFICIARY
BY ROBERT NTAARA
AND
IN THE MATTER
BETWEEN
NJIRU MBUTHA.....1ST PETITIONER
TABITHA KARAMANA.....2ND PETITIONER
BERNARD T. KINYUA.....3RD PROTESTOR
AND
JOSEPH BARIO.....1ST PROTESTOR
FAITH RIGIRI LAMBIL.....2ND PROTESTOR
JUDITH NKOROI.....3RD PROTESTOR
BEATRICE MWENGA MBUUTHA.....4TH PROTESTOR
ROSE MURIIRA.....5TH PROTESTOR
RULING

Introduction

1. By a ruling dated 29th November, 2018, the deceased's estate comprising of LR.NO. NTIMA/NTAKIRA/1737 was distributed as equally in the following terms:

1st House

- Joanina Mukiri
- Julius Koome (deceased) – Equal shares to Stellan Ntinyari Kimaita, Grace Karwira Koome, Isaiah Mugiira Koome, Phineas Mwongela Koome and Moses Mutembei Kinyua

2nd House

- Judith Nkoro
- Faith Rigiri (deceased) share to Charity Karegi Kararu
- Beatrice Mwendwa
- Charles Muriira (deceased) share to Rose Muriira

3rd House

- Tabitha Karimana (widow)
- Jacob Mburugu

- Harriet Kiende
- Isabella Kagwiria
- Sarah Karwira
- Karuru Rose
- Joseph Muchui (deceased) share to Anderson Mutembei to be held in trust for Tabitha Karimama and Jacob Mburugu
- James Mugambi

4th House

- Njiru Mbutha (widow)
- Emily Kairuthi
- Francis Mugambi
- Samuel Murithi
- Charity Kathure

6th House

- Benjamin Kinyua (deceased) –Equal shares to Juliet Mataarea M'Marete, Bernard T.Kinyua, Julius Koome Kinyua, Jostino Murungi Kinyua, Joyce K. Anampiu, Nicjholas Maiteithia, Martin Muthuri, Ann Mwendwa, Juster Gacheri, Halun Nturibi and Anceta Kananu

Summons

2. By Summons dated 1st February, 2021 filed on even date, **ROBERT NTARA (Applicant)** prays for orders that:

1. **The court be pleased to review its orders dated 25th September, 2018 and include applicant as a beneficiary in the confirmed grant**

2. **Costs be in the cause**

3. The application is based on the ground that the Applicant who is a son of the deceased from the 2nd house was denied a share of deceased's estate.

4. The summons is supported by an affidavit sworn by the Applicant on 29th January, 2021 in which he avers that there is no evidence that he had been provided for.

5. In response, **JUDITH NKOROI (3rd Protestor)** by her replying affidavit sworn on 24th February, 2021 contends that the court found that Catherine Nkirote, Joseph Bario and Robert Ntara (**Applicant**) had been provided for by the deceased in his lifetime.

6. The Respondent contends that deceased subdivided his land **L.R. KIRUA/RUIRI/607** into two portions **L.R. KIRUA/RUIRI/1605** and **1606** as evidenced by a green card marked **JN1**. That subsequently, **L.R. KIRUA/RUIRI/1606** was portioned into **L.R. KIRUA/RUIRI/1893 to 1895** as buttressed by a green card marked **JN2**. That **L.R. KIRUA/RUIRI/1894** was transferred to Robert Ntara (**Applicant**) as demonstrated by a green card marked **JN3**.

Analysis and Determination

7. I have considered the affidavit evidence on record and deduced two issues for determination as follows:

1. **Whether Robert Ntara (Applicant) was provided for by the deceased during his lifetime.**

2. Whether the applicant has satisfied the threshold for grant of an order of review

8. Section 42 of the Law of Succession which provides as follows:

Where—

a. an intestate has, during his lifetime or by will, paid, given or settled any property to or for the benefit of a child, grandchild or house; or

b. property has been appointed or awarded to any child or grandchild under the provisions of section 26 or section 35 of this Act, that property shall be taken into account in determining the share of the net intestate estate finally accruing to the child, grandchild or house.

9. It is not disputed that deceased settled **L.R. KIRUA/RUIRI/1894** in favour of Robert Ntara (*Applicant*) as demonstrated by a green card marked **JN3**.

10. The Applicant's contention that there was no evidence that he had been provided for is therefore not merited and it is rejected.

11. Section 42 of the Act provides for the taking into account during distribution, gifts made to beneficiaries by the Deceased during his life, as follows:

Previous benefits to be brought into account Where—

a. an intestate has, during his lifetime or by will, paid, given or settled any property to or for the benefit of a child, grandchild or house; or

b. property has been appointed or awarded to any child or grandchild under the provisions of section 26 or section 35 of this Act, that property shall be taken into account in determining the share of the net intestate estate finally accruing to the child, grandchild or house.

12. From the totality of the material presented before the court, I find that the Applicant has not demonstrated discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the impugned judgment was passed, or some self-evident error or omission on the face of the record, or any other sufficient reason that would entitle him to an order of review.

13. From the foregoing analysis, I have come to the conclusion that the Summons dated 1st February, 2021 filed on even date is devoid of merit and it is dismissed.

14. Costs to the Respondents.

DATED AT MERU THIS 22ND DAY OF APRIL, 2021

T. W. CHERERE

JUDGE

Court Assistant

Applicant

For Respondent - Morris Kinoti

- N/A

- Ms. Atieno for M/s J.K.Ntarangwi & Co. Advocates