



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

(CORAM: CHERERE-J)

SUCCESSION CAUSE NO. 460 OF 2015

**IN THE MATTER OF THE ESTATE OF ELIJAH M'MUGAMBI MUTHURI Alias ELIJAH M'MUGAMBI MUTHUURI
(DECEASED)**

BETWEEN

BENSON KINYUA.....PETITIONER/RESPONDENT

AND

FLORENCE MUCECE PETER.....1ST OBJECTOR

HARRIET NKATHA.....2ND OBJECTOR

EVANGIRINE MUTUMA MUGAMBI.....3RD OBJECTOR

AND

GEORGE MUTUMA MUGAMBI.....1ST INTERESTED PARTY

RULING

Introduction

1) **ELIJAH M'MUGAMBI MUTHURI (Deceased)** died on 23rd March, 2001. His estate comprises of **LR.NO. NYAKI/CHUGU/387** and $\frac{1}{2}$ of **LR. NO. NYAKI/CHUGU/593**.

2) Deceased's family comprised of the following:

1st House

Mukubu Elijah - Widow (deceased)

Children

1) Gladys Kanario - (deceased)

2) George Mutuma Mugambi

3) Evangirine Karambu

4) Harriet Nkatha

5) Florence Mucece Peter

2nd House

Grace Karwira Elijah - Widow (deceased)

Children

- 1) **Edward Mugambi Itari**
- 2) **Ruth Mwendwa -(deceased)**
- 3) **Kajuju Elija -(deceased)**
- 4) **Benson Kinyua**
- 5) **Lydia Kigetu -(deceased)**
- 6) **Susan Kathure -(deceased)**

3) Letters of Administration were issued to **Benson Kinyua (Petitioner/Respondent)** on 05th October, 2015. Subsequently, Petitioner/Respondent applied for Confirmation of Grant and proposed that **LR.NO. NYAKI/CHUGU/387** be distributed equally to three sons of the deceased namely:

i. George Mutuma Mugambi

ii. Edward Mugambi Itari

iii. Benson Kinyua

4) Deceased's daughters **Florence Mucece Peter, Harriet Nkatha and Evangirine Karambu (1st, 2nd and 3rd Protestors/Applicants respectively)** by an affidavit sworn by the 1st Protestor/Applicant opposed the mode of distribution proposed by the Petitioner and the Interested Party on the ground that they had not been provided for.

5) Subsequently on 05th August, 2020, the Petitioner by his affidavit and in his evidence before the court conceded that the deceased had given land to his sons during his lifetime while the daughters had not been provided for. He proposed that the estate be distributed as follows:

LR.NO. NYAKI/CHUGU/387 measuring 0.05 acres

Jointly to all the children of the deceased

LR. NO. NYAKI/CHUGU/593 measuring 1 acre

- i. ½ jointly to Susan Kathure's children Lawrence Gitonga, Joram Muriuki Rukunga and Fests Muriuki Rukunga**
- ii. ½ jointly to all the children of the deceased**

6) On the other hand, the 1st Protestor/Applicant by her affidavit sworn on 22nd January, 2021 stated that deceased had given land to his sons during his lifetime. She therefore proposed that the estate be distributed as proposed by the 1st Objector.

LR.NO. NYAKI/CHUGU/387 measuring 0.05 acres

Harriet Nkatha

LR. NO. NYAKI/CHUGU/593 measuring 1 acre

- i. 0.375 acres to Florence Mucece Peter and Evangirine Karambu**
- ii. 0.250 acres to Gladys Kanario's daughter Rosemary Kendi M'Muguna**
- iii. 0.250 acres jointly to Ruth Mwendwa's daughter Paskwalina Kuri Mutuma; Kajuju Elijah's son Godfrey Mutuma Gikundi and Lydiah Kigetu's daughter Ireen Kagwiria**
- iv. 0.125 acres jointly to Susan Kathure's children Lawrence Gitonga, Joram Muriuki Rukunga and Fests Muriuki Rukunga**

7) **George Mutuma Mugambi (Interested Party/Applicant)** by his affidavit sworn on 27th January, 2021 and his evidence before the court also conceded that the deceased had given land to his sons during his lifetime while the daughters had not benefited. He identified the asset

settled to him as **LR. NYAKI/CHUGU/1105** and tendered a search certificate in support thereof. He proposed that the estate be distributed as proposed by the 1st Objector at paragraph 6 above.

Analysis and Determination

8) I have considered the evidence on record and submissions for the Protestors and the Interested Party. The gravamen of this Protest revolves around distribution deceased's estate comprising of **LR.NO. NYAKI/CHUGU/387** and ½ of **LR. NO. NYAKI/CHUGU/593**.

9) It is on record that ½ of **LR. NO. NYAKI/CHUGU/593** does not form part of deceased's free estate the same being registered in the name of **Susan Kathure (deceased)** who was survived by three children:

i. Lawrence Gitonga

ii. Joram Muriuki Rukunga

iii. Festus Muriuki Rukunga

10) This far, the evidence on record has disclosed that the deceased's free property available for distribution comprises of **LR.NO. NYAKI/CHUGU/387** and ½ of **LR. NO. NYAKI/CHUGU/593**.

11) It is not disputed that during his lifetime, deceased settled part of his estate to his sons as follows:

1) **LR.NO. NYAKI/CHUGU/594** to Elijah M'Mugambi who transferred to Benson Kinyua

2) **LR.NO. NYAKI/CHUGU/666** to Benson Kinyua

3) **LR.NO. NYAKI/CHUGU/664** to Edward M'Mugambi who transferred to Benson Kinyua

4) **LR.NO. NYAKI/CHUGU/981** to Edward Mugambi who transferred to one Edward Kirimi

5) **LR.NO. NYAKI/CHUGU/982** to Edward Mugambi

6) **LR. NYAKI/CHUGU/1105** to George Mutuma Mugambi

12) It is also not disputed that the deceased did not settle any of his property to his daughters, the Objectors herein.

13) Section 42 of the Law of Succession which provides **THAT**:

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.

14) One thing that stands out prominently in this cause is that the insatiable desire of the deceased's sons, who have already been provided for yet still want to share in the little that is left of deceased's estate.

15) The proposal by the sons of the deceased leaves no doubt in the mind of the court that they are acting under the fallacious patriarchal family tree which excluded daughters and any one claiming under them from inheriting from their fathers.

16) Today, it will be pretentious for any person to say or act ignorantly of the fact that discrimination of any person on the basis of gender or status is prohibited under the Constitution of Kenya, 2010, because; other than the existence of abundantly clear provisions of the Constitution, the chain of judicial decisions on discrimination on the basis of gender or status are equally clear. (See **Rono v Rono & Another, 2008 1 KLR (G & F) page 803; Douglas Njuguna Muigai v John Bosco Maina Kariuki & another [2014] eKLR; Mwongera Mugambi Rinturi & another v Josphine Kaarika & 2 others [2015] eKLR; Stephen Gitonga M'murithi v Faith Ngira Murithi [2015] eKLR and Joyce Kabiti M' Turuchu v David M' Niritu Kiambi [2016] eKLR).**

17) Having said that, I find and hold that none of the deceased's children ranks in a higher level in priority to the others notwithstanding their sex or gender. Similarly, I find that the sons of the deceased are not entitled to what remains of deceased's estate having already benefited from the estate.

18) In the result, it is hereby ordered **THAT**:

1. ½ of LR. NO. NYAKI/CHUGU/593 is hereby distributed to Susan Kathure’s children Lawrence Gitonga, Joram Muriuki Rukunga and Fests Muriuki Rukunga in equal shares

2. LR.NO. NYAKI/CHUGU/387 and ½ of LR. NO. NYAKI/CHUGU/593 is hereby distributed equally to the surviving daughters of the deceased namely Evangirine Karambu, Harriet Nkatha and Florence Mucece Peter together with the beneficiaries of the estates of deceased’s daughters Gladys Kanario, Ruth Mwendwa, Kajuju Elija and Lydia Kigetu.

3. Florence Mucece Peter (*1st Protestor/Applicant*) is directed to within 30 days of today’s date file a chief’s letter disclosing the names of the children of Gladys Kanario, Ruth Mwendwa, Kajuju Elijah and Lydia Kigetu to aid the court in unambiguous distribution of the estate.

4. Evangirine Karambu, Harriet Nkatha and Florence Mucece Peter together with the beneficiaries of the estates of deceased daughters Gladys Kanario, Ruth Mwendwa, Kajuju Elijjah and Lydia Kigetu are encouraged to agree on a mode of administration that is fare and just

5. Mention on 26th July, 2021 to confirm compliance with orders above and for further orders and/or directions

DATED AT MERU THIS 27th DAY OF *May* 2021

T. W. CHERERE

JUDGE

Court Assistant - Morris Kinoti

For Petitioner - Ms. Mukaburu for Kiogora Arithi & Co. Advocates

For Objectors - N/A for Maitai Rimita & Co. Advocates

For Interested Party - N/A for Kaumbi & Co. Advocates