



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

SUCCESSION CAUSE NO. 499 OF 2014

(CORAM: WAMAE T. CHERERE-J)

IN THE MATTER OF ESTATE OF JOSEPH MWAINI M'ITHIRA (DECEASED)

BETWEEN

JOYCE KANIA JACOB.....1ST ADMINISTRATOR/RESPONDENT

AND

JULIUS MUTUMA NTANGI.....1ST PROTESTOR/3RD ADMINISTRATOR

JANE NKIRINGA NTANGI.....2ND PROTESTOR

ESTHER KARAMBU NTANGI.....3RD PROTESTOR

RULING

Background

1. **Joseph Mwaine M'ithira (Deceased)** died sometimes on 05th January, 2013. Deceased was neither married nor did he have children.
2. Deceased's estate comprised of the following assets:
 - 1) L.R NO. TIGANIA/THANANGA/1070
 - 2) L.R NO. TIGANIA/THANANGA/1071
 - 3) L.R NO. TIGANIA/THANANGA/1072
3. **Joyce Kania Jacob (1st Administrator/Respondent)** who described herself as sister to the deceased filed this cause and was on 15th December, 2014 **issued with** Letters of Administration Intestate.
4. By an undated summons filed on 16th July,2015, the 1st Administrator/Respondent named the following as dependents of the deceased:
 - 1) **Mary Kalotia James Sister**
 - 2) **Patrick Kailikia M'Ithira Brother**
 - 3) **Francis Mutua Ngatunyi Brother**
 - 4) **Mutuma Ntangi Brother**
 - 5) **Joyce Kanja Jacob Sister**
 - 6) **Jerusha Karimi Kanake Sister**

5. Upon the Protestors getting wind of the filing of this cause, they protested and the court by a ruling dated 25th January, 2016 appointed **Joyce Kanja Jacob, Jerusha Karimi Kanake and Julius Mutuma Ntangi** as joint administrators of the estate.

6. Subsequently, the administrators filed an application dated 09th February, 2016 for confirmation of the grant. By an affidavit sworn on 09th February, 2016, the 1st and 2nd Administrators proposed to distribute deceased's estate as follows:

1) L.R NO. TIGANIA/THANANGA/1070

Mary Kalotia James

2) L.R NO. TIGANIA/THANANGA/1071

Patrick Kailikia M'Ithira

3) L.R NO. TIGANIA/THANANGA/1072

i. Francis Mutua Ngatunyi 2 acres

ii. Mutuma Ntangi 0.42 acres

iii. Joyce Kanja Jacob 0.42 acres

iv. Jerusha Karimi Kanake 0.42 acres

4) Cash in KCB Bank A/C 110455412

i. Joyce Kanja Jacob

ii. Jerusha Karimi Kanake

iii. Julius Mutuma Ntangi

7. **Julius Mutuma Ntangi (1st Protestor/3rd Administrator)** on the other hand, having failed to agree with the co-administrators filed his affidavit sworn on 20th February, 2017 and proposed to distribute deceased's estate as follows:

1) L.R NO. TIGANIA/THANANGA/1070

Ibrahim Musa

2) L.R NO. TIGANIA/THANANGA/1071

Patrick Kailikia M'Ithira

3) L.R NO. TIGANIA/THANANGA/1072

i) Joyce Kanja Jacob 0.40 acres

ii) Jerusha Karimi Kanake 0.40 acres

iii) Mutuma Ntangi 2.46 acres

8. In another turn of events, **Jane Nkiringa Ntangi and Esther Karambu Ntangi (2nd and 3rd Protestors)** by an affidavit of protest sworn on 30th January, 2019 averred that they were widow and daughter of David Ntangi M'Ithira who was sibling to Joyce Kanja Jacob, Jerusha Karimi Kanake and **the deceased and that the family of David Ntangi M'Ithira is also a rightful heir of deceased's estate. It was their case that** Patrick Kailikia M'Ithira and Ibrahim Musa who are step brothers of deceased, and Mary Kalotia James and Francis Mutua Ngatunyi who are unrelated to the deceased are not entitled to deceased's estate.

9. **Patrick Kailikia M'Ithira, Mary Kalotia James and Francis Mutua Ngatunyi** laid a claim on deceased's land parcel **L.R NOS. TIGANIA/THANANGA/1070, 1071 and 1072** respectively on the grounds that they had bought the same from deceased.

Oral Evidence

10. The court directed that the protests be heard by way of viva voce evidence. **Esther Karambu Ntangi (3rd Protestor)** maintained that the beneficiaries of deceased's estate were deceased's siblings Joyce Kanja Jacob, Jerusha Karimi Kanake the late David Ntangi M'Ithira's

family. It was her evidence that the deceased did not dispose off his assets during his lifetime. Her evidence was corroborated Sentry M'Laibani, a step brother of the deceased.

11. Joyce Kanja Jacob (1st Administrator) in her evidence conceded that she, Jerusha Karimi Kanake and the late **David Ntangi M'Ithira were deceased's siblings**. It was her evidence that **Jane Nkiringa Ntangi (2nd Protestor)** was widow of the late David Ntangi M'Ithira and **Esther Karambu Ntangi (3rd Protestor) and Julius Mutuma Ntangi (1st Protestor/3rd Administrator)** some of the late David Ntangi M'Ithira's children. She conceded that Mary **Kalotia James, Patrick Kailikia M'Ithira** and **Francis Mutua Ngatunyi** were not deceased's siblings as averred in her affidavit, but purchasers.

12. **Patrick Kailikia M'Ithira** conceded that he was deceased's step brother. He contended that he had bought **L.R NO. TIGANIA/THANANGA/1070** from deceased in 1990 by way of an oral agreement. **Mary Kalotia James** on the other hand testified that deceased was his cousin and claimed she was entitled to ½ acre of **L.R NO. TIGANIA/THANANGA/1071** given to his father M'Akwali M'Kailiba by the deceased in 1969 for which she had paid deceased Kshs. 50,000/- but he before he transferred it to her. **Francis Mutua Ngatunyi** likewise claimed he had by an oral agreement bought 2 acres of deceased's land **L.R NO. TIGANIA/THANANGA/1072**.

Analysis and Determination

13. **I have considered the evidence on record and the submissions filed on behalf of the parties.** I have identified the following issues for determination:

i. Whether purchaser's claim by Patrick Kailikia M'Ithira, Mary Kalotia James and Francis Mutua Ngatunyi have been proved

ii. The rightful beneficiaries of deceased's estate

iii. Distribution of deceased's estate comprised in L.R NO. TIGANIA/THANANGA/1070, 1071 and 1072

14. Concerning the first issue, **Patrick Kailikia M'Ithira, Mary Kalotia James** and **Francis Mutua Ngatunyi** failed to satisfy the court that they had bought land from the deceased. The alleged sales were not in writing and neither was any of the witnesses that testified present when the alleged sales were effected.

15. What makes the alleged sales even more suspect is the fact that the said **Patrick Kailikia M'Ithira, Mary Kalotia James** and **Francis Mutua Ngatunyi** initially presented themselves as siblings of the deceased and only made a claim for purchaser's interest after they were disowned by the protestors.

16. Having failed to prove purchaser's interest, I find that no useful purpose will be served in invoking the provisions of Rule 41(3) of the Probate and Administration Rules to preserve part of the estate as sought by the Petitioner.

17. The answer to the second issue concerning the identification of the rightful beneficiaries of deceased is to be found in **Section 39** of the Law Succession Act which provides **THAT:**

(1) Where an intestate has left no surviving spouse or children, the net intestate estate shall devolve upon the kindred of the intestate in the following order of priority

a) father; or if dead

b) mother; or if dead

c) brothers and sisters, and any child or children of deceased brothers and sisters, in equal shares; or if none

d) half-brothers and half-sisters and any child or children of deceased half-brothers and half-sisters, in equal shares; or if none

e) the relatives who are in the nearest degree of consanguinity up to and including the sixth degree, in equal shares.

(2) Failing survival by any of the persons mentioned in paragraphs (a) to (e) of subsection (1), the net intestate estate shall devolve upon the State, and be paid into the Consolidated Fund.

18. It is on record that deceased was neither married nor had children. His parents are long deceased. By virtue of the foregoing provision, the rightful heirs of deceased's estate are his siblings Joyce Kanja Jacob, Jerusha Karimi Kanake and the family of deceased's brother David Ntangi M'Ithira (as a single unit) with none of them having a better claim over the others.

19. From the foregoing analysis, deceased's estate is distributed as follows:

1) L.R NO. TIGANIA/THANANGA/1070

Joyce Kanja Jacob

2) **L.R NO. TIGANIA/THANANGA/1071**

Jerusha Karimi Kanake

3) **L.R NO. TIGANIA/THANANGA/1072**

Jane Nkiringa Ntangi for her benefit and in trust for her children Mary Kathambi Ntangi, Esther Karambu Ntangi, Julius Mutuma Ntangi, Erastus Kirimi Ntangi, Douglas Murithi Ntangi and Josephine Nkirote Ntangi.

20. No evidence was tendered to demonstrate that the deceased had any cash held at **KCB Bank A/C 110455412**. The parties are at liberty to tender such evidence to assist court in completing the process of distribution.

21. The protests were necessitated by the Petitioner in making a false statement that **Patrick Kailikia M'Ithira, Mary Kalotia James** and **Francis Mutua Ngatunyi** were deceased's siblings and by the concealment of the existence of the family of deceased's brother the late **David Ntangi M'Ithira** obviously with an intention to disinherit them. Petitioner shall therefore pay costs to the Protestors.

22. This matter shall be mentioned on **17th November, 2021** to confirm compliance with these and for further orders and/or directions.

DATED AT MERU THIS 23RD DAY OF SEPTEMBER, 2021

WAMAE, T. W. CHERERE

JUDGE

Court Assistant - Morris Kinoti

For 1st Petitioner - Mr. Mwirigi for Mwirigi Kaburu & Co. Advocates

For Protestors - N/A for Mutembei & Kimathi & Co. Advocates