

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NANYUKI

SUCCESSION CAUSE NO.20 OF 2015

IN THE MATTER OF THE ESTATE OF LYDIA KANYUA MUTHURI – DECEASED

MUTHURI M'RINGERA.....ADMINISTRATOR/APPLICANT

VERSUS

1. JULIUS GITONGA MUTHURI

2. JOHN MUTAI MUTHURI

3. ZAVERIO MUTHOMI MUTHURI.....PROTESTORS

J U D G M E N T

1. The Deceased in this cause, **LYDIA KANYUA MUTHURI**, died intestate on 17/12/2008. On 20/09/2017 a *grant of letters of administration intestate* to her estate were issued to her spouse, **MUTHURI M'RINGERA**, who applied by summons dated 15/02/2018 for confirmation of that grant. He proposed at paragraph 4 of his supporting affidavit that he should inherit absolutely the only asset comprising the free estate of the Deceased, land parcel **LR TIGITHI MATANYA BLOCK 9/363 (MIKUMBUNE)**.

2. On 30/10/2018 an *affidavit of protest* was filed by one **JULIUS GITONGA MUTHURI**, a son of the Deceased, on his own behalf and also on behalf of other named protestors, **JOHN MUTAI MUTHURI** and **ZAVERIO MUTHOMI MUTHURI**, who are also sons of the Deceased. It is counter-proposed in the affidavit of protest that the land should be shared equally by the eight dependants of the Deceased (comprising her spouse and seven children). The other 4 children (named in paragraph 3 of the affidavit sworn in support of the petition for grant are **ROBERT GATOBU MUTHURI**, **CHARLES MWENDA MUTHURI**, **SIMON GICHUNGE MUTHURI** and **DAVID GITUMA MUTHURI**.

3. The Deceased having been survived by her spouse and 7 children (all adults), distribution of her estate is governed by *section 35* of the *Law of Succession Act, Cap 160*, which means that the spouse would be entitled only to a life interest in the parcel of land comprising the estate. However, the children have proposed that their father do get a share similar to that of each child. That means that the land should be shared equally between the eight of them (spouse and seven children). I find nothing wrong with that.

4. In the event the grant be and is hereby confirmed as sought. The parcel of land comprising the estate shall be shared equally by the eight dependants of the Deceased (that is her spouse and the seven children). It is so ordered.

DATED AND SIGNED AT NANYUKI THIS 19TH DAY OF AUGUST 2021

H P G WAWERU

JUDGE

DELIVERED AT NANYUKI THIS 21ST DAY OF OCTOBER, 2021