



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

SUCCESSION CAUSE NO. 32 OF 2013

IN THE MATTER OF THE ESTATE OF M'NKANAHA M'THIURU (DECEASED)

DAVID MUTHURI M'NKANATHA.....PETITIONERS

VERSUS

JANE KARUKI NKANATHA.....1ST PROTESTOR

MARGARET NYOROKA.....2ND PROTESTOR

STELLA KIRUMBA.....3RD PROTESTOR

RULING

1. The deceased M'Nkanata M'Thiuru died on 4th June 2001 as a result of Hepatic Failure. He was aged 70 years. He was survived by one widow namely Monica Mwithiabi and:-

- a. David Muthuri – son
- b. Mercy Kinya – Daughter in law
- c. Jane Karuki – Daughter
- d. John Mutuma – Grandson – adult
- e. Margaret Nyoroka M'Mbori – daughter – married.
- f. Tabitha Muthoni M'Nkanata – Daughter at home

2. The deceased died and left the following assets registered in his name:-

- a. Abothuguchi/Katheri/3562
- b. Abothuguchi/Katheri/3561
- c. Abothuguchi/Katheri/3560
- d. Abothuguchi/Katheri/3559
- e. Abothuguchi/Katheri/3558

3. Grant of Administration was made to David Muthuri M'Nkanata on 15th day of October 2013. Summons for confirmation of grant was subsequently filed on 13th March 2018 and it was supported by the affidavit of David Muthuri M'Nkanata who at paragraph 5(a) to (e) distributed the estate as follows:-

i. Abothuguchi/Katheri/3558 – to Mercy Kinya -0.488 Ha

ii. Abothuguchi/Katheri/3559 – 0.810 Ha to:-

a. Jane Karuki -0.202 ha

b. Mercy Kinya – 0.303 Ha

c. David Muthuri – 0.303

d. Monica Mwitabi – life interest on Mercy Kinya, Jane Karuki and David Muthuri’s portions on LR 3559

iii. Abothuguchi/Katheri/3560 – 0.472 to go to John Mutuma

iv. Abothuguchi/Katheri/3561-0.506 Ha to go to David Muthuri Mkanata absolutely

v. Abothuguchi/Katheri/3562 -0.405 Ha to go to Dominic Murithi

4. Margaret Nyoroka by an affidavit sworn on 27th March 2018 protested to mode of distribution proposed by David Muthuri on the ground that she is daughter to the deceased and therefore entitled to inherit from the estate. Further that Simon Macharia Muthuri was son to the petitioner and should therefore inherit through the petitioner and not directing from the deceased who is his grandfather.

5. Stella Kirumba in her affidavit in protest Sworn in March 2018 said she is daughter to Tabitha Muthoni – deceased – who was daughter to the deceased herein. She said she grew up under the care of the deceased and expected to be considered as a beneficiary. She said that the petitioner in his proposed mode of distribution was not agreeable to her as she had not been provided for. She said that herself and her aunt Jane Karuki and her grandmother lived on LR 3559. She said the son to the petitioner; one Simon Macharia Muthuri entered LR 3559 without permission in 2013 and constructed a semi-permanet house which he considers his home. She proposed that LR Abothuguchi/3559 be distributed equally to herself, Jane Karuki and Margaret Nyoroka.

6. Jane Karuki M’Nkanata also swore an affidavit on 27.3.2018 protesting manner of distribution. She also suggested that LR Abothuguchi/Katheri/3559 be distributed to her, Stella Kirumba and Margaret Nyoroka Kiambi to share equally. Jane Karuki in cross examination confirmed that David Muthuri the petitioner had been given 2 acres of land by the deceased. To the family of Nkonge – deceased – husband to Mery Kinya was also given over one acre. She said that 3rd portion was given to Dominic Murithi- one acre.

7. That the 4th portion of one acre was given to John Mutuma and 2 acres in 5th portion was left registered in the name of the deceased. She said Simon Macharia the son of the petitioner has put up a stone house on the portion that remained in the deceased person’s name. She said the deceased person’s widow didn’t give the portion to Simon Macharia. She said the 5th portion that remained for the deceased should be given to the daughters of the deceased. She said she was not satisfied with 0.50 acres. She said that her views were not accepted at the family meeting. She said Stella Kirumba was her deceased sisters Tabitha Muthoni’s daughter. She said that John Mutuma was also son to the late Tabitha Muthoni. She said land given to John Mutuma was not on account of his mother. She said Stella was brought up by the deceased from childhood.

8. She said Mercy Nkirote was daughter to Tabitha Muthoni. She gave names of Tabitha Muthonis children:-

a. Stella Kirumba

b. John Mutuma

c. Mercy Nkirote

d. Susan Kinanu

9. Jane Karuki said the deceased shared his land physically but titles had not been processed. She said that her and her 2 sisters were not given any shares of land by the deceased.

10. Margaret Nyoroka also testified and said the dispute in the estate is over a portion of land that the deceased left for himself and his wife. She said that prior to Tabithas death she was staying on deceased persons land with her mother. She said that the 2 acres that the deceased left is used by Macharia the son of the petitioner. She said the widow to the deceased didn’t allow Macharia to put up a house on LR 3559. She said Tabitha was staying at the deceased land where she brought up Stella Kirumba. She said that John Mutuma son to the late Tabitha Muthoni was given land as a gift by the deceased at the time he was also giving his sons land but not on behalf of his mother. She said she didn’t denounce her right to the estate. Margaret Nyoroka said she was the eldest child to the deceased. Stella Kirumba testified and adopted her statements and affidavit in protested. She reiterated what Jane Kiruka and Margaret Nyoroka said in their evidence in chief.

11. The petitioners case was scheduled to be heard on 28th January 2019 but on due date, neither the petitioner nor counsel were present. After this court delivered a ruling on 28th February 2019 an application was filed by the petitioner seeking that the ruling be set aside and the Petitioner’s case be re-opened. By consent of the advocates on record for the parties the application was allowed on 29th April 2019 and the Petitioner and his witnesses allowed to testify.

12. In his testimony the Petitioner confirmed that the deceased had 5 children, 2 sons and 3 daughters and that Julius Nkonge and Tabitha Muthoni were since deceased. He said that the deceased died before Tabitha Muthoni. He claimed that LR. No. Abothuguchi/Katheri/3560 was given to John Mutuma on behalf of his mother Tabitha Muthoni and that John Mutuma constructed a house for his mother on the said piece of land. The Petitioner said that the daughters of Tabitha Muthoni were not entitled to any other land in the estate of the deceased. He confirmed that the deceased had subdivided his land into 5 portions and gave out 4 of the portions leaving one portion for himself and his wife namely:- LR Abothuguchi/Katheri/3559.

13. In his proposed mode of distribution the Petitioner had distributed to himself 0.303 Ha out of LR No. 3559 and proposed that his mother who was still alive by the time he was making that proposal was to have life interest on the entire parcel of land. The reason why he apportioned himself part of the land as he explains in his testimony is that Parcel No. 3561 measuring 2 acres that was given to him was very sloppy. He therefore proposed that LR. No. 3559 should be shared between himself, the unmarried daughters of the deceased and Julius Nkonge.

14. The Petitioner also claimed that the widow of the deceased called a meeting in 2013 and said that Simon Macharia, his son should put up a house near the grandmothers house in order to take care of her as she was growing old. Although he had not proposed any share to be given to Margaret Nyoroka he now said that 0.25 acres should go to her out of LR. 3559.

15. In affidavit sworn by the Petitioner on 8th March 2018, the Petitioner had distributed LR. 3560 to John Mutuma and in cross examination he said that he did not give that parcel to John Mutuma absolutely. He however, confirmed that Margaret Nyoroka, John Mutuma and Jane Kariuki did not sign minutes of a meeting held on 27th January 2018 to discuss distribution of the estate. The minutes were annexed to the Petitioners affidavit sworn on 26th November 2018. The Petitioner confirmed that those minutes indicate that John Mutuma was given one acre of Land by his grandfather. He confirmed that in those minutes it was not indicated that the land given to John Mutuma was on behalf of his mother and it did not indicate that he was assigned to take care of his mother and his sisters.

16. By the time the Petitioner alleges that a meeting to discuss distribution of the estate was held the widow of the deceased who had priority to Petition for letters of administration was still alive and it is confirmed that she didn't attend the meeting. The Petitioner attributes her lack of attendance to old age.

17. PW2 the sister in law of the deceased also testified and said that the deceased shared his land to his sons and not daughters. She said that the deceased remained with one portion of land measuring 2 acres and that land given to John Mutuma was not for his mother. PW2 denied that Stella Kirumba was brought up at the deceased persons home, she said that currently, parcel of land no. 3559 was being used and occupied by Mutuma, Simon and Karuki. She confirmed that the deceased did not call his daughters when he was sharing land to his sons but that he was concerned about his daughters particularly Tabitha Muthoni when she was chased from her matrimonial home. She said that the deceased gave Karuki 0.5 acres and the balance was to go to Muthuri and Nkonge. The witness had no objection if Margaret Nyoroka the daughter of the deceased was given her father's land.

18. PW3 Stanely Mwobobia also testified and confirmed the fact that Dominic Murithi son to the Petitioner herein was given 1 acre of land by the deceased and that John Mutuma who was born and raised by the deceased also got 1 acre. He said that after the deceased had distributed his land he remained with LR. 3559 measuring 2 acres which he claimed was supposed to go to the sons of the deceased.

19. PW4 Silas Guantai, claimed that the land that was given to John Mutuma was meant for his mother whereas Jane Karuki got 0.5 acres and Dominic Muthuri son of the Petitioner was given 1 acre. He said that the daughters of the deceased also had a right to inherit their father's land.

20. From the evidence on record for Protesters and the petitioners it is not in dispute that the sons of the deceased and 2 grand sons had benefitted inter vivos from the estate of the deceased as follows:-

a. LR Abothuguchi/Katheri/3558 was given to Julius Nkonge-now deceased-and his wife Mercy Kinya should hold that land in trust for herself and the children of the late Julius Nkonge.

b. LR Abothuguchi/Katheri/3560 was given to John Mutuma since he was born and raised up at the deceased persons home.

c. LR Abothuguchi/Katheri/3561 given to David Muthuri measuring 2 acres. From the witnesses to the petitioner he didn't complain to the deceased that the portion he was given was sloppy and therefore not suitable.

d. LR Abothuguchi/Katheri/3562 given to Dominic Murithi son to the Petitioner in the same way that the deceased gave John Mutuma his grandson 1 acre. If we are to go by the argument of the Petitioner that the land given to John Mutuma was on behalf of his mother then the same argument would apply to the petitioner that the land given to Dominic Muthuri was on his behalf.

e. LR Abothuguchi/Katheri/ 3559 remained in the name of the deceased for himself and his wife and according to Jane Karuki, Stella Kirumba and Margaret Nyoroka, Tabitha Muthoni stayed with the widow of the deceased prior to Tabitha's death and her remains were interred in the parcel of land in question.

21. Although the Petitioner claimed that Simon Macharia was authorized to stay on LR 3559 by the widow of the deceased, by the time that the Petitioner swore affidavit distributing the estate on 13th March 2018 the widow of the deceased was alive but the Petitioner did not mention in that Affidavit that there was such authority and the said widow did not swear an affidavit to that effect. The said Simon Macharia is said to have trespassed onto this parcel of land in 2013 before the court confirmed the grant distributing the estate and therefore he acted without authority as he was not the Administrator and the land was still in the name of the deceased's grandfather.

22. The proposed distribution by the Petitioner did not indicate that Simon Macharia was a beneficiary or that he had constructed his land on the said land. It is the Petitioner who had allocated himself 0.303 ha. This court finds the purported allocation to the petitioner and the claim that Simon Macharia was given land by his grandmother is an afterthought and cannot be regarded.

23. This court finds that the daughters of the deceased start in the same footing as the sons of the deceased and are entitled to inherit from their father's estate. Being that the only property remaining to be distributed is LR. Abothuguchi/Katheri/3559, the same shall be distributed as follows:-

- a. Margaret Nyoroka to get 0.50 acres
- b. Jane Karuki to get 0.50 acres
- c. Tabitha Muthoni to get 0.50 acres
- d. The remaining 0.50 acres which includes the portion where Simon Macharia has constructed his house, shall be used for the benefit of the 2 sons of the deceased.

24. Each party to bear their own cost of the application.

.....

HON. A.ONG'INJO

JUDGE

RULING SIGNED, DELIVERED AND DATED THIS 27TH DAY OF JANUARY 2020.

In the presence of:

CA:- Kinoti

Petitioner:- Mrs Ntarangwi Advocate for Petitioner - Present

Petitioner – Present in person

Protestors:- N/A

Protestors:- M/s Basilio Gitonga for Protesters – Present

.....

HON. A.ONG'INJO

JUDGE

Mr Gitonga

We pray that we be supplied with copy of ruling.

Order: Parties to pay copying charges to be supplied with copy of ruling.

.....

HON. A.ONG'INJO

JUDGE