



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KERUGOYA**

**SUCCESSION CAUSE NO.324 OF 2013**

**IN THE MATTER OF THE ESTATE OF THE WAMBUI KINYUA ITHENGEZE .....DECEASED**

**PETER CUIRI KIGANJO.....PETITIONER**

**VERSUS**

**JOSEPH MUTHII KINYUA.....1<sup>ST</sup> PROTESTOR**

**MUNGURURIO KIGANJO.....2<sup>ND</sup> PROTESTOR**

**JUDGMENT**

1. This cause relates to the estate of WAMBUI KINYUA ITHENGEZE, deceased who died intestate on 5.6.2005. A grant of Letters of Administration were issued to PETER CIURI KIGANJO and MUNGURURIO KIGANJO on 14.6.2016 and is dated 20.6.2016. The Petitioners then proceeded to file a summons for confirmation of grant dated 15.7.2016. In the affidavit in support of the application the Petitioners depones that the deceased was survived by JOSEPH MUTHII KINYUA a step son. Other dependants were also listed namely;

**MUNGURURIO KIGANJO - GRANDSON**

**PETER CIURI KIGANJO - GRANDSON**

**JUDY WAMBUI KARANJA - GRANDDAUGHTER**

**NANCY KATIRI KIGANJO - GRANDDAUGHTER**

2. The Petitioners listed the assets as Land parcel No.MWERUA/KAGIO/396 which they proposed that it would be distributed as follows

**JECIDA WANGECI NJOGU - 5 ACRES**

**MUNGURURIO KIGANJO - 1 ACRE**

**JOSEPH MUTHII KINYUA - 1 ACRE**

**NANCY WATIRI KIGANJO - 1 ACRE**

**JUDY WAMBUI KIGANJO - 1 ACRE**

**PETER CIURI KIGANJO - 1 ACRE**

3. There was a grant which was issued to PETER CIURI KIGANJO on 7.9.2005 which was revoked by consent on 13.6.2006. The court directed that the summons for confirmation of grant to proceed for hearing.

4. There is a summons for confirmation of grant dated 24.10.2016 by one of the Co-Petitioners PETER CIURI KIGANJO which has proposed a different mode of distribution of the estate. The summons is based on the ground that the Co-administrator MUNGURURIO KIGANJO is not entitled to the estate of the deceased as he was land elsewhere and is seeking to give land to persons who are not entitled. PETER CIURI depones that the deceased WAMBUI KINYUA THENGEZE was survived by NJUNI KIGANJO, deceased, daughter. Other dependants are;

JECIDA WANGECHI NJOGU - CO-WIFE

PETERSON CIURI KIGANJO - GRANDSON

MUNGURURIO KIGANJO - GRANDSON

JUDY WAMBUI KARANJA - GRANDDAUGHTER (MARRIED)

NANCY WATIRI KIGANJO - GRANDDAUGHTER (MARRIED)

His contention is that the estate in dispute is land parcel No.L.R. MWERUA/KAGIO/396 measuring 10 acres. He proposed that the land be distributed as follows;

**PETER CIURI KIGANJO -5 ACRES**

**JECINDA WANGECHI NJOGU – 5 ACRES**

5. The parties agreed to proceed by way of viva voce evidence for the court to determine the issue of distribution of the estate. The 2<sup>nd</sup> summons for confirmation of grant proceeded as a protest.

I have considered the averments in the affidavits and the evidence which was tendered before this court. I have also considered the submissions. The affidavits in support of the summons show that the only issue in contention is whether JOSPEH MUTHII KINYUA is entitled to one acre from the estate of the deceased.

6. The deceased died on 5.6.2005. The administration of her estate is supposed to proceed under the provisions of the **Law of Succession Act Cap.160 Laws of Kenya** to be referred to as the Act.**Section 2(1) provides:**

***“Except as otherwise expressly provided in this Act or any other written law, the provisions of this Act shall constitute the law of Kenya in respect of, and shall have universal application to, all cases of intestate or testamentary succession to the estates of deceased persons dying after the commencement of this Act and to the administration of estates of those persons.”***

The Act has made provision on how the estate of a deceased person should devolve. **Section 29 of the Act** defines the meaning of dependants;

***(a) the wife or wives, or former wife or wives, and the children of the deceased whether or not maintained by the deceased immediately prior to his death;***

***(b) such of the deceased’s parents, step-parents, grand-parents, grandchildren, step-children, children whom the deceased had taken into his family as his own, brothers and sisters, and half-brothers and half-sisters, as were being maintained by the deceased immediately prior to his death; and***

***(c) Where the deceased was a woman, her husband if he was being maintained by her immediately prior to the date of her death.***

The provision not only defines dependants but also gives the order of priority. This must be interpreted that where an intestate dies in case of a man, the wife or wives have priority followed by the children in that order. Short of wife and children the next category of dependants are deceased parents, stepparents and grand children, step grandchildren, children who deceased had taken into his family as his own, brothers and sisters, half brothers and half-sisters who were being maintained by the deceased prior to his death. In the case of woman the husband has priority.

7. The one with 1<sup>st</sup> priority must also take precedence and the next in line comes in if the one with 1<sup>st</sup> priority is not there. Step-children don’t take priority.

8. From the evidence tendered before me, JOSEPH KINYUA MUTHII is not a son of the deceased. He is a son of her co-wife. He is a step-child of the deceased and does not have priority in the estate of the deceased. PETER CIURI KIGANJO is a grandson of the deceased. Since the parents of the deceased are not available, the next in line in priority are the grandchildren who in this case are PETER CIURI KIGANJO and his siblings who I have listed above.

9. The relationship between the parties is not in dispute. Though the protestor in his submission states that the 1<sup>st</sup> Protestor JOSPEH MUTHII KINYUA is a son of the deceased, this is not supported by the evidence. JOSEPH MUTHII KINYUA (PW1) testified that deceased WAMBUI KINYUA had one child. He testified that he was the son of JACINTA WANGECHI one of the wives. The mother of the Petitioner is his sister. PW1 is therefore a stepson of the deceased.

10. PW1 further testified that the two co-wives were using land parcels No.MWERUA/KAGIO/396. They went to court and the land was sub-divided into two each house got five acres that is house of WAMBUI five acres and house of WANGECHI fives acres. This is buttressed by the title deed for the land which was annexed by the petitioner, annexure, copy of the Register for L.R. MWEA/KAGIO/396, list of

document No.5 which shows that the land which was registered on 1.11.1960 in the name of KINYUA IBINGERI was on 14.9.2001 transferred to WAMBUI KINYUA ITHENGEZE and JACINTA WANGECHI NJOGU in equal shares. This means that each of the wife got an equal share. The PW1 having admitted he is the son of JACINTA WANGECHI, he cannot claim to be a son of the deceased in this case. He has no priority in the estate of the deceased.

11. The Petitioner has annexed a document No.2 on the list of documents which was produced as exhibit with no objection. The document shows that the 1<sup>st</sup> protestor JOSPEH MUTHII KINYUA agreed as far back as year 2001 agreed to vacate the portion of land belonging to WAMBUI KINYUA as per the court order of 13.7.2001. The deceased was alive and signed the document. JOSPEH MUTHII also signed. KINYUA MUTHII admitted that he has one acre piece of land from his mother. During cross-examination, PW1 admitted that he will inherit five acres of his mother WANGECHI. The claim of one acre from the estate of deceased is prompted by greed. He can only inherit that which the law allows him to inherit. PW1 denied that he entered an agreement to sell one acre but PW2 admitted that they want to sell one acre and they have already received Kshs.475,000/= from one KIRIGWI. PW1 was therefore not truthful. I find that the claim by the 1<sup>st</sup> Protestor JOSEPH MUTHII is without merits. Even the 2<sup>nd</sup> Protestor admitted that JOSPEH MUTHII should get land from his mother's share that is WANGECHI KINYUA.

12. I find that the protest is without merits.

13. On distribution, the Petitioner proposes that the land parcel be shared equally between the two widows. The two widows are deceased. The estate of the late JACINTA WANGECHI KINYUA is not in issue in this cause as the cause relates to the estate of WAMBUI KINYUA ITHENGEZE. This court can only distribute the estate of the deceased in this cause.

14. The affidavit of the Petitioner PETER CIURI KIGANJO shows that he has other siblings who are still living. The Petitioner has already acquired land parcel No.MWERUA/KAGIO/2710. His proposal to get five acres is unfair and discriminatory to his siblings who are entitled to the estate. The law of Succession Act advocates equal distribution of the estate to beneficiaries who rank in equal priority. This court must jealously guard that spirit of the Act and say no to proposals which are discriminatory and selfish. This sibling of the Petitioner testified and showed interest in getting a share of the estate. This is the 2<sup>nd</sup> Protestor MUNGURURIO KIGANO who is a brother of the Petitioner. The Petitioner listed him as a dependant and when it comes to distribution he wants to deny him his rightful shares. The other siblings;

**JOYCE WARUI KARIUKI**

**NANCY WATIRI KIGANJO**

**ALICE WANJIRU**

who are sisters of the Petitioner did in statement dated 18.12.2017 which they adopted as their evidence renounced their claim and had no objection to the Petitioner's proposed mode of distribution.

15. The 2<sup>nd</sup> Respondent had proposed that he gets one acre and the other siblings one acre each. Now that the three renounced their shares the estate of the deceased ought to be distributed between the two grandchildren that is the Petitioner and the 2<sup>nd</sup> Respondent.

#### **IN CONCLUSION**

The Protestor JOSEPH MUTHII KINYUA is not entitled to the estate of the deceased as his rightful share is in estate of his mother JACINTA WANGECHI NJOGU. The Petitioner and the 2<sup>nd</sup> Protestor MUNGURURIO KIGANJO are the rightful beneficiaries being children of the deceased daughter (grandchildren) of the deceased whose this estate relates. The estate of the deceased is half share of land parcel No.MWERUA/KAGIO/396. I order that:-

1. The estate of the deceased be shared equally between PETER CIURI KIGANJO and MUNGURURIO KIGANJO.
2. The half share of land parcel NO.MWERUA/KAGIO/396 remains the estate of JACINDA WANGECHI NJOGU.
3. The protest by the 1<sup>st</sup> Protestor JOSEPH MUTHII KINYUA is without merits and is dismissed.
4. The protest by the 2<sup>nd</sup> Protestor is equally dismissed.

A certificate of grant shall be issued. Each party shall bear it's own costs.

**Dated and delivered at KERUGOYA this 23<sup>rd</sup> day of January 2020.**

**L. W. GITARI**

**JUDGE**