



REPUBLIC OF KENYA

IN THE HIGH COURT KENYA

AT MERU

SUCCESSION CAUSE NO 16 OF 2011

IN THE MATTER OF THE ESTATE OF M'NDETHIU MUBEA.....DECEASED

STARLINGS MBURUGU NDETHIU.....APPLICANT

ERASTUS KIAMBATIPETITIONER

VERSUS

FAITH NDUMBA.....1ST ADMINISTRATRIX/RESPONDENT

MARION GAKIL.....2ND ADMINISTRATOR RESPONDENT

RULING

1. The distribution of the estate of the deceased herein who died on 6th April 2004 was done vide a ruling delivered on 22nd of November 2018. This followed hearing of a protest by viva voce evidence after the Petitioner Erastus Kiambati failed to respond to the said protest and after he also failed to appear in court and testify as to his proposed mode of distribution of the estate.
2. When the ruling was delivered Starling Mburugu Ndethiu by an application dated 14th January 2019 sought that the grant that was confirmed to Faith Ndumba and Marion Gakii on 22nd November 2018 be revoked for the reasons that during the hearing of the protest, none of his siblings from the 1st house were served to attend and that the current Administratrixes had left out Lydia Nguta a daughter to his late sister and provided for Jackline Karimi whose late mother was not the biological daughter of the deceased. The Applicant also claimed the Petitioner Erastus Kiambati was the son to the deceased's late brother and that he was entitled to a share of the estate because it is the deceased who brought him up.
3. The application dated 14th of January 2019 was opposed by Faith Ndumba in her replying affidavit sworn on 10th July 2019. She averred that the Applicant and his siblings as well as the Petitioner were always aware of the hearing date and that there was evidence that they were served to attend court but failed to do so. It was her view that the court made a fair distribution to all the dependants of the deceased.
4. Lydia Nguta Ndethiu and Erastus Kiambati swore affidavits in support of the applications by Starlings Mburugu claiming that the deceased had in 1976 identified portions of LR No.Kibirichia/735 to his children and that his wishes should be honoured. Erastus Kiambati confirmed that he had been served with an affidavit of protest but he didn't know what was expected of him and when he came to court on the date of ruling he found he had been excluded as a beneficiary, that when he approached his current advocates to appeal on his behalf, he was advised to withdraw the notice of appeal as he had no grounds of appeal as he had not responded to the protest, neither did he testify.
5. In Starlings Mburugu's supplementary affidavit sworn on 20th August 2019, he averred that the family had entrusted Erastus Kiambati with the responsibility of petitioning for letters of administration to the estate of the deceased but the said Petitioner did not inform him of the progress of the cause and he only learnt about the date of the ruling. He confirmed that on two occasions the Assistant Chief served his two sisters Margret Mwari and Gladys Ntimi and his brother Benson Murugu with court papers but they never contacted him as he stays and works in Nairobi.
6. Starlings Mburugu's application dated 14th January 2019 was heard by way of viva voce evidence and from the testimonies of the rival parties, it comes out clearly that the parties have joined issues to the fact that prior to the deceased's death he had identified certain portions of LR No.Kibirichia/735 to his children and the surviving widow as well as the Petitioner, save that when the Petitioner filed this cause he identified himself as the son of the deceased rather than the nephew which fact was not true.
7. When Erastus Kiambati made a proposal for distribution of the estate of the deceased he did not get consent from the beneficiaries and

when Faith Ndumba and Marion Gakii filed a protest he failed to defend his mode of distribution. At the close of the Protester's case on 21st September 2017 it took this court more than one year trying to trace the Petitioner through the Chief of Kiamogo Location but the Petitioner and the Applicant as well as the beneficiaries from the 1st house failed totally to attend to court and as such this court decided to make a determination to distribute the estate on the 22nd November 2018

8. Although the Applicant claims that Lydia Nguta was left out of the distribution by the Respondents it is very clear that the Petitioner apart from leaving out many other beneficiaries did not list the said Lydia Nguta as a beneficiary to the estate of the deceased on account of her deceased mother. His affidavit in support of the application for confirmation sworn on 9th May 2012 distributed the estate to himself, Starlings Mburugu Ndethiu, Gladys Ntimi Ndethiu, Murugu Jackson Ndethiu and Marion Gakii Ndethiu . That affidavit does not explain the fate of the other beneficiaries in regard to their rights to the estate of the deceased.

9. In consideration of the admission by Marion Gakii that the deceased had identified portions of the estate for his children and that she had been given one acre of land to use, it appears to this court that the deceased intended that each of his sons as well as the Petitioner Erastus Kiambati would get one acre of land each , whereas his wife Marion Gakii and her daughters would share one acre of land equally and that Jackline Karimi the daughter of Mercy Nkirete(now deceased) would get her mother's share from that one acre.

10. On the other hand, Gladys Ntimi, Margret Mwari, Monica Ntibuka, Grace Kathure and Lydia Nguta (daughter to the late Karegi Ndethiu) would share one acre equally from LR Kibirichia/735.A certificate of confirmation shall issue to that effect and costs of the application to be borne by each party.

HON.ANNE ADWERA ONGINJO

JUDGE

DATED AND DELIVERED AT NAIROBI VIA EMAIL THIS 27TH DAY OF APRIL 2020 DUE TO THE PRESIDENTIAL DIRECTIVES ISSUED ON 15TH MARCH 2020 AND SUBSEQUENTLY ON 7TH APRIL 2020 DUE TO COVID-19 PANDEMIC.

HON.ANNE ADWERA ONGINJO

JUDGE