



REPUBLIC OF KENYA

IN THE HIGH COURT KENYA

AT MERU

SUCCESSION CAUSE NO 737 OF 2012

IN THE MATTER OF THE ESTATE OF NYIRI MBOGORI.....DECEASED

GINARO KIOGORA ITHINJI.....1ST PETITIONER

LUKA MUTWIRI MUGWIKA.....2ND PETITIONER

PAUL M'AMATHI M'ITHINJI.....3RD PETITIONER

VERSUS

NAOMI NKOROI.....APPLICANT

RULING

1. The estate of the late Nyiri Mbogori who died on 1st October 1967 is due for distribution following the filing of summons for confirmation dated 9th April 2018 by Genaro Kiogora Ithinji. The Applicant proposed that parcel of land No.Ntima/Igoki/1354 be shared equally between the families of the Late Moses M'Ithinji and the Late M'Ikiugu M'Inyiri who were the only children of the deceased herein.This proposal was confirmed by Luka Mutwiri Mugwika and Paul M'Amathi M'Ithinji save that Paul M'Amathi proposed that the share due to his late father Moses M'Ithinji be distributed into 3 portions where he and his brother Genaro Kiogora would get one portion each and their mother Naomi Nkoroi and the daughters of their father to get the 3rd portion to share equally.

2. The share belonging to the late M'Ikiugu M'Inyiri was then to be shared equally amongst his children namely:

- a. Peter Kubania M'Mbui
- b. Luca Mutwiri Mugwika
- c. Peter Kiambi N'Ikiugu
- d. Eutycus Mutuma
- e. Boniface Kinyua Nkubi

3. Paul M'Amathi M'Ithinji swore a supplementary affidavit on 26th November 2019 in which he annexed a copy of minutes purported to have been taken and presided over by the Assistant Chief of Lower Igoki Sub-Location where it was decided that the share for the Late M'Ithinji M'Inyiri was to be divided into 3 and the 3rd portion was to be shared between the widow and the daughters of the deceased whereas the 2 sons were to take a portion each. The minutes are not signed by those who are alleged to have attended or even the Assistant Chief who is said to have presided over and taken the minutes. The said Assistant Chief has not sworn an affidavit to confirm the allegations made by Paul M'Amathi. Veronica Ntarara Mutua and Genaro Kiogora opposed the averments in the supplementary affidavits and said there was no meeting held on 5th November 2009 as alleged by Paul M'Amathi . The two proposed equal distribution of the share of the late M'Amathi M'Ithinji .

4. In the 3rd Petitioner's written submissions in support of his proposal of mode of distribution he urged the court to apply the Ameru customary law in the distribution of the estate of the deceased for reasons that the deceased died in 1967 and the Law of Succession Act came into operation on 1st July 1981.However this proposal is sharply contrasted by the allegations that a meeting was held on 6th November 2009 in which the mode of distribution he proposed was agreed upon.

5. It is not in dispute that the deceased died in 1967 as per the letter dated 16th January 2012, written by Geoffrey Murithi Chief of Igoki Location, but the 3rd Administrator has not explained how the application of the Ameru Customary law comes into play because they are grandchildren of the deceased and their father who was the direct beneficiary is since deceased. The 3rd Administrator Paul M'Amathi has not disclosed when his father M'Amathi M'Ithinji died so that his estate could be administered in accordance with the Ameru customary law. In any case the property LR No.Ntima/Igoki/1354 measuring 1.41 HA is a registered property which can only be regulated by the Constitution of Kenya 2010 and the written law which is The Law of Succession Act. The 3rd Administrator being one of the children of the Late M'Amathi M'Ithinji does not have a legal basis to claim more shares than his mother and siblings. In the circumstances the estate of the late Nyiri Mbogori shall be distributed as follows:

LR No.Ntima/Igoki/1354-1.41 HA

a.0.705 HA to be shared equally amongst

i. Peter Kubania M'Mbui

ii. Luca Mutwiri Mugwika

iii. Peter Kiambi N'Ikiugu

iv. Eutycus Mutuma

v. Boniface Kinyua Nkubi

b. 0.705 HA to be shared equally amongst

i. Naomi Nkoroe

ii. Paul M'Amathi

iii. Genaro Kiogora Thinji

iv. Veronica Ntarara

v. Derebina Kathure

vi. Hellen Kooru

vii. Lydia Naitore

viii. Janet Nkirote

ix. Harriet Kibobori

6. A certificate of confirmation of grant shall issue to that effect and the cost of the application for confirmation shall 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