



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MURANG'A

SUCCESSION CAUSE NO. 112 OF 2013

FORMERLY EMBU HC CAUSE 452 OF 20121

RE ESTATE OF CHARLES MWANGI MUCHIRI (DECEASED)

REGINA WANGECHI MWANGI.....ADMINISTRATOR

VERSUS

LUCY NJOKI KIURA.....PROTESTOR

JUDGMENT

1. Charles Mwangi Muchiri (hereafter *the deceased*) died intestate on 27th January 2011. He left behind three properties: Nthawa/Riandu/1478; Loc.14/Kiru/3684; and, a share of Loc.14/Kiru/172.

2. There is a tussle between his *widow* (the administrator) and his *daughter in law* (the protestor) over distribution of one of those properties, Nthawa/Riandu/1478 (hereafter *the suit land*).

3. A grant of letters of administration was issued to the administrator on 13th April 2015. The administrator lodged summons for confirmation of the grant on 13th February 2017. She proposed that the suit land be shared equally between the protestor and a purchaser known as Elias Githumbu *alias* Tiberias Githumbu Njiru.

4. She testified that the deceased sold half of the land to the purchaser. However, in her witness statement dated 3rd January 2020 (which was admitted as her evidence in chief) she proffered different reasons:

The truth of the matter is that my daughter-in-law cannot inherit this land alone as it would be against the wishes of the deceased.

If she is allowed to do so the rest of the beneficiaries are definitely going to protest as she will have acquired a greater share than everybody else.

5. The administrator called one witness, Francis Mwachongi Kibanya. He relied on his statement dated 3rd January 2020. The material part of his evidence was that the deceased bequeathed the suit land to his sons Muchiri (the protestor's husband) and Maina. Following their death, the land was left in the hands of the protestor. He said that the deceased sold 1½ acres that belonged to Maina to Elias Githumbu.

6. Earlier on 30th December 2015, the protestor had filed summons to revoke the grant. The summons was struck out by *Waweru J* on 30th November 2016 as the administrator had priority to administer the estate. However, the learned judge advised the protestor to file an affidavit of protest to the distribution of the estate.

7. When she took to the stand, the protestor relied wholly on the affidavit of protest sworn on 4th January 2017. Her case is that the entire suit land was given to her late husband by the deceased; and, that she is unaware of the purported sale. In her view, the purchaser should pursue his claim against the administrator. She also contended that the administrator inherited two parcels of land in Murang'a being Loc.14/Kiru/3684 and part of Loc.14/Kiru/172.

8. She testified that it would be unjust to leave her and her five children with only half of the suit land; and, that the more just cause would be to refund the purchase price to the alleged purchaser; or, to allocate him the remainder of the estate in Murang'a.

9. From the pleadings and evidence, there is no dispute that the protestor is entitled to a share of the estate. As I stated earlier, the only dispute revolves around the Nthawa/Riandu land. The key issue for determination is whether the deceased had during his life time sold half of the suit land to the purchaser.

10. The administrator claimed that the sale was done two years before the death of the deceased. But she conceded that she did not have any written document or sale agreement to confirm it. She had no evidence on the price or terms of the sale.

11. Her other witness (DW2) said as follows:

I was not there. He [the deceased] had mentioned it to me, I do not know how much it cost. I do not know whether the agreement was in writing.

12. The purchaser was not called as a witness. In any case, he was claiming an interest as a creditor. I thus readily find that the sale was *not* proved. It is not lost on me either that the sale of an interest in land must be reduced into writing. There was no tangible evidence of the date or terms of the sale. I have reached the conclusion that it is a red herring.

13. Power reposes in the court to order distribution of the estate in a fair manner. See **Rono v Rono & another** [2008] 1 KLR (G&F), [2005] 1 KLR 538. My final orders shall thus be as follows-

a. That the protestor (Lucy Njoki Kiura) shall have a *life interest* over the land known as Nthawa/Riandu/1478 to be *held in trust* for her five children Simon Muchiri, Charles Mwangi, Johnson Macharia, Gerald Maina and Maureen Kagendo.

b. That the property known as Loc.14/Kiru/3684 shall devolve wholly to the administrator Regina Wangechi Mwangi.

c. That the property known as Loc.14/Kiru/172 shall be shared equally between the administrator (Regina Wangechi Mwangi), Johnson Macharia, Richard Waweru and Peter Ndaiga.

14. The grant shall be *confirmed* in terms of this judgment.

15. Costs follow the event and are at the discretion of the court. In the interests of justice each party shall bear its own costs.

It is so ordered.

DATED, SIGNED and DELIVERED at MURANG'A this 23rd day of April 2020.

KANYI KIMONDO

JUDGE

ORDER

The date of delivery of this judgment was given to the parties at the conclusion of the hearing; and, by a further notice by the Deputy Registrar. In light of the declaration of measures restricting court operations due to the *COVID-19 pandemic*; and, following the directions issued by his Lordship, the Chief Justice on 15th March 2020 and 21st April 2020, this judgment has been delivered in chambers in the absence of the parties. The Deputy Registrar shall forthwith transmit a certified copy to the parties.

KANYI KIMONDO

JUDGE

Judgment read in chambers in the presence of:

Ms. Dorcas, Court Assistant.