



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

SUCCESSION CAUSE NO. 236 OF 2005

IN THE MATTER OF THE ESTATE OF JEREMIAH MURITHI MWIRICHA

JOSEPH MWEBIA JEREMIAH.....PETITIONER

VERSUS

FLORENCE KAIRIGO.....1ST INTERESTED PARTY

LYDIA GACHERI MUTHEE.....2ND INTERESTED PARTY

RULING

1. **Jeremiah Murithi Mwiricha** (*the deceased herein*) died on 15th November 1997. As per the letter of introduction from the Area Chief Kathera Location, where the deceased was domiciled, the deceased left behind the following dependants; **Joseph Mwebia Jeremiah, Moses Kiambi Marete, Zipporah Jeremiah, Martha Jeremiah, Lydia Muthee, Florence Jediel, Stephen Gituma Jeremiah.**

2. **Joseph Mwebia Jeremiah** (*the petitioner herein*) petitioned for letters of administration on 18/1/2005 listing **L.R.NO.S NKUENE/ KATHERA/1239 & ABOGETA/U-CHURE/1521** as the assets of the deceased. Grant of letters of administration was issued on 12/05/2008. The petitioner filed summons for confirmation of grant on 18/11/2008. The same was confirmed on 10/12/2008. A certificate of confirmation of grant was issued on 11/12/2008 distributing the estate of the deceased as follows;

Joseph Mwebia Jeremiah	Abogeta/U-Chure/1521	whole
Moses Muriuki Mburugu Nkuene/ Kathera/1239		2 Acres
Stephen Gituma Jeremiah	“	2 Acres
Moses Kiambi Marete	“	1 Acre

3. On 13/8/2013 **Florence Kairigo & Lydia Gacheri Muthee** filed summons for revocation and/or annulment of grant. They also sought inhibitory Orders over the estate properties. They averred that the grant was obtained fraudulently and by concealment from the court of something material. In particular they averred that they were never informed of the institution of these proceedings and that the petitioner had moved to destroy their granary and houses in the estate property. On 10/10/2013 this Court issued inhibitory orders over the estate properties.

4. On 6/11/2018 parties entered a consent setting aside the confirmation proceedings. They also agreed to file their respective mode of distribution. The summons for confirmation of grant dated 18/11/2008 was set down for hearing on 4/9/2019. This court directed the parties to proceed by way of viva voce evidence. On 4/11/2019 parties agreed to rely on the affidavits and statements filed and their respective proposals.

5. The petitioner filed his statements on 15/10/2018. He stated that the deceased had during his lifetime given all his lands to his sons in 1991 as follows; **Stephen Gituma 3Acres, Joseph Mwebia 5 acres, Moses Kiambi 5 acres.** That the balance left was L.r. No. Nkuene/Kathera/1239 & Abogeta/U-Chure/1521. L.r. No. 1521 was given to Joseph Mwebia in the year 1992 and after a long illness he called clan leaders on 23/1/1997 and divided L.r. No. 1239 to his three sons as follows; Stephen Gituma 2 acres, Joseph Mwebia 2 acres and Moses Kiamba 1 Acre. That the deceased confirmed this through a subsequent meeting on 27/10/1999.

6. He denied that the interested parties had built and or farmed on the land. It was his statement that the 1st interested party farmed the land until the year 2009 after which she left with their elder brother. He also stated that the interested parties were well aware of the filing of the

succession cause. That he also informed them of his sale of 2 acres of the estate property. In his proposed mode of distribution dated 3/09/2019 the petitioner stated that Parcel No. 1521 was not part of the deceased estate and proposed to grant 1 acre of Parcel No. 1239 to the interested parties.

7. **Moses Kiambi Marete** also confirmed the averments made by the petitioner. He also stated that they have since agreed to give the interested parties ½ an acre each.

8. The interested parties filed their mode of distribution on 22/11/2018. They restated that the deceased had given land to his sons in the year 1991. That the remainder of the estate was parcels No. 1521 & 1239. They proposed to distribute the same equally amongst all the dependants of the estate.

Analysis and Determination

9. I have considered the statement of the parties and their proposed modes of distribution. The deceased herein was survived by his children but no spouse. The estate of the deceased shall therefore be distributed in line with section 38 of the Law of Succession Act. The same provides as follows;

38. Where intestate has left a surviving child or children but no spouse

Where an intestate has left a surviving child or children but no spouse, the net intestate estate shall, subject to the provisions of sections 41 and 42, devolve upon the surviving child, if there be only one, or shall be equally divided among the surviving children.

10. **Section 41** provides for property devolving upon child to be held in trust while section 42 provides for previous benefits to be brought into account. Section 42 mandates this court to take into account properties granted to the children of the estate during the lifetime of the deceased. That property shall be taken into account in determining the share of the net intestate estate finally accruing to the child, grandchild or house.

11. In **Christine Wangari Gichigi -V- Elizabeth Wanjira Evans & 11 Others (2014) eKLR** the Court held that:

“Under Section 38 of the Act all that one needed to establish in this cause was to show that they were either children or grandchildren of the deceased. Matters of failure to participate actively in the litigation proceedings should not have dissenting consideration in respect of 2, 3 and 4 cross appellants in the absence of renunciation of respective claims to the estate.

12. In this case I do note that the sons of the deceased were granted a considerable share of the estate of the deceased during the lifetime of the deceased. I also note that the daughters of the deceased were not granted any share of the estate.

13. As for the case of the daughters I wish to align myself to the decision of the Court of Appeal in **Mwongera Mugambi Rinturi & another v Josphine Kaarika & 2 others [2015] Eklr** where the Court stated bluntly that;

“This Court has long accepted that a child is a child none being lesser on account of gender or the circumstance of his or her birth. Each has a share without shame or fear in the parents’ inheritance and may boldly approach to claim it. What RONO –VS- RONO (Supra) decided about the prohibition of discrimination on grounds of sex under the retired Constitution applies with yet greater force under the current progressive Constitution of Kenya, 2010. See also GRACE WACHUKA – VS- JACKSON NJUGUNA GATHUNGU [2014] eKLR. We have already noted that Mr. Kioga did concede, as he had to, that one cannot exclude daughters. We have also adverted to the irony of his then asserting in the same breath, that Florence should nevertheless have been excluded.”

14. I have considered the different modes of distribution. Section 38 of the law of succession Act connotes an equal share of the estate. Taking into consideration the previous benefit issued to the sons of the deceased and inconsideration that the applicants have proposed an equal share of LR. Abogeta/U-Chure/1521 and LR No. Nkuene/Kathera/1239 I do move to distribute the estate of the deceased as follows;

Abogeta/U-Chure/1521

Joseph Mwebia Jeremiah

Moses Kiambi

Lydia Muthee in equal shares

Florence Jediel

Stephen Gituma

L.R. No. Nkuene/Kathera/ 1239

Joseph Mwebia Jeremiah

Moses Kiambi

Lydia Muthee in equal shares

Florence Jediel

Stephen Gituma

Each Party will bear their own costs of the application dated 13th August 2013.

HON A. ONG'INJO

JUDGE

RULING DATED AND DELIVERED AT MERU VIA EMAIL THIS 28TH DAY OF MAY 2020 DUE TO THE PRESIDENTIAL DIRECTIVES ISSUED ON 15TH MARCH 2020 AND SUBSEQUENTLY ON 7TH APRIL 2020 DUE TO COVID-19 PANDEMIC.

HON A. ONG'INJO

JUDGE