



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MERU
SUCCESSION CAUSE NO 19 OF 2017

IN THE MATTER OF THE ESTATE OF MM ALIAS II (DECEASED)

SKG.....APPLICANT/PETITIONER

VERSUS

AN.....1ST RESPONDENT

SM.....2ND RESPONDENT

JUDGMENT

1. Before me is a summons for confirmation of grant dated 10th January, 2019. The summons seeks confirmation of the grant of letters of administration issued to SKII on 4/4/2018. According to the affidavit in support of the said summons sworn by SK on 21/11/2019, the deceased who died on 27/10/2015 left the following beneficiaries:

- a. SKG – 1st wife
- b. AN – 2nd wife
- c. SM - son
- d. CK – son (deceased)
- e. JKK – Daughter
- f. JK – Daughter
- g. CKG – Daughter

2. The deceased also left the following assets:

- a. L-R No. KIRIMARA/KITHITHINA/BLOCK [...]
- b. L.R NO. NTIMA/NTAKIRA/[...]
- c. PLOT NO. [...] TIMAU MARKET
- d. ½ SHARE IN PLOT NO.NTIMA/IGOKI/[...]
- e. PLOT NO. NTIMA/OGOKI/[...]
- f. ½ SHARE IN PLOT NO. NTIMA/IGOKI/[...]
- g. CASH IN FAMILY BANK

h. CASH IN STANDARD CHARTERED BANK

3. S proposed in her affidavit that the estate be distributed as follows:

i) Land Parcel No. KIRIMARA/KITHITHINA BLOCK [...]

AKM

WNK

AKM to hold in trust

R M for BK and EK

BK (minor) who are minor as representative of the estate

EK (Minor) of the late C jointly as one title.

ii) Land Parcel No. NTIMA/NTAKIRA/[...]

a) SM 0.6 Hectares

i) Estate of CK represented by: 0.4 hectares

i. AKM

ii. WNK

iii. RM

iv. BK (Minor)

v. EK (Minor)

ii). SKG

CKG 1.624 hectares to own jointly as one

JKK title.

JKM

iii) PLOT No. [...] TIMAU MARKET

SM whole

iv) ½ share of PLOT NO. TIMA/IGOKI/[...]

SM whole

v) Plot No. NTIMA/IGOKI/[...]

AN whole

vi) ½ share of PLOT No. NTIMA/IGOKI/[...]

SKG

CKG

JKK to own jointly as one title

JKM

vii) KIRIMARA/KITHITHINA/BLOCK [...]

- a) AN - ½ share
- b) Estate of CK - ½ share represented by:
 - i. AKM
 - ii. WNK
 - iii. RM
 - iv. BK (Minor)
 - v. EK (Minor)

viii) MONEY HELD WITH FAMILY BANK

- a) SKG ½ share to share equally
- b) AN
- c) CKG
- d) JKK balance to share equally
- e) JKM
- f) SM
- g) Estate of CK - represented by:
 - i. AKM
 - ii. WNK
 - iii. RM
 - iv. BK (Minor)
 - v. EK (Minor)

ix) MONEY HELD WITH STANDARD BANK

- a) SKG ½ a share to share equally
- b) AN
- c) CKG
- d) JKK balance to share equally
- e) JKM
- f) SM
- g) Estate of CK – Represented by:
 - i. AKM
 - ii. WNK
 - iii. RM

iv. BK (Minor)

v. EK (Minor)

4. AM proposed at paragraph 2 of her further affidavit on how the estate should be distributed. Her proposal is the same as that of Petitioner.

5. The Protestor one SM opposed distribution of the estate in the manner proposed by the two widows. He filed a protest dated 6/12/2019. He also made his proposal on distribution as follows:

i) KIRIMARA/KITHITHINA BLOCK [...]The Deceased bequeathed the above to be inherited by the children of the late CK and SM in equal share

ii) NTIMA/NTAKIRA/[...]was bequeathed to SM and the children of CK in equal shares.

iii) PLOT NO. [...]TIMAU MARKET be inherited wholly by SM.

iv) NTIMA/IGOKI/[...] to be shared to:-

1. SKG

2. JK

3. JK

4. CKG in equal share

v) NTIMA/IGOKI/[...] to be shared by CK alone as per the deceased's wishes

vi) NTIMA/IGOKI/[...] bequeathed to SM alone

vii) Family Bank shares to be shared as proposed.

viii) Standard Bank shares as proposed

ix) THAT the court should distribute the estate of the deceased as proposed herein and in accordance with the wishes of the deceased.

Submissions

6. Parties also filed submissions to augment their proposals. The Petitioner submitted that when the beneficiaries set a date to discuss the issue of distribution, the 2nd respondent/protester declined to attend as a result of which the other beneficiaries agreed on how the estate was to be distributed, as set out in her further affidavit. She urges the court to dismiss the mode of distribution proposed by the Protestor who filed his protest after being served with the further affidavit.

7. The 2nd Respondent also submitted that they oppose the mode of distribution suggested by the Petitioner and the 1st Respondent since it goes against the wishes of the deceased. He stated that the Petitioner never invited the 2nd Respondent for any formal meeting, neither have they had dialogue nor engaged in any meaningful meeting in discussion of the suit estate.

8. The 1st Respondent also submitted that she was served with the protest by the 2nd Respondent and she does not agree with the proposed distribution of the estate. She said that she was living with the deceased up to the last day but she never heard him giving any property to the protester as alleged. She prays that the mode of distribution of the estate be as she has set out in her affidavit. She also agrees with the petitioner on what she stated in her affidavit on distribution.

ANALYSIS AND DETERMINATION

9. I am called upon to distribute the estate to the rightful beneficiaries, and confirm the grant accordingly.

Beneficiaries

10. The first assignment is to determine the rightful beneficiaries of the estate. According to the papers filed, the deceased who died on 27/10/2015 left the following beneficiaries:

a. SKG – 1st wife

b. AN – 2nd wife

- c. SM - son
- d. CK – son (deceased)
- e. JKK – Daughter
- f. JK – Daughter
- g. CKG – Daughter

Estate assets

11. The deceased also left the following assets:

- a. L-R No. KIRIMARA/KITHITHINA/BLOCK [...]
- b. L.R NO. NTIMA/NTAKIRA/[...]
- c. PLOT NO. [...] TIMAU MARKET
- d. ½ SHARE IN PLOT NO. NTIMA/IGOKI/[...]
- e. PLOT NO. NTIMA/OGOKI/[...]
- f. ½ SHARE IN PLOT NO. NTIMA/IGOKI/[...]
- g. CASH IN FAMILY BANK
- h. CASH IN STANDARD CHARTERED BANK

Distribution

12. The ultimate assignment is distribution of the estate of the deceased. I have considered the proposals by the parties herein. I do note that the protestor claims that his proposal is in accordance with the wishes of the deceased. He who alleges must prove. See sections 106 and 107 of the Evidence Act. He did not provide evidence of the alleged wishes of the deceased and how they were made and conveyed. In fact, the widow of the deceased who stated that she lived with the deceased until his death stated that she was not aware of any wishes by the deceased on sharing of his assets. I reject the allegation.

13. I also do note that his proposals are tinged with patriarchal biases which are still very strong in Ameru community despite repeated pronouncements by court that these biases are prohibited discrimination under article 27 of the Constitution, and are usually struck down with lethal force under the constitutional mattock. Discrimination of daughters. See a wok of court **in the Matter of the Estate of M’Ngarithi M’Miriti alias Paul M’Ngarithi M’Miriti (Deceased) [2017] eKLR on: -**

Discrimination of daughters in inheritance

From the arguments coming through, it is clear issues to do with discrimination based on gender and sex have emerged. There were bad times in the heavily patriarchal African society; that being born as daughter disinherited you. And so, even the judicial journey to liberate daughters from being so down-trodden by the patriarchal society in Kenya on matters of inheritance has been long and painful. As a matter of fact, due to the constitutional architecture of our nation at the time, before 2010, we only saw pin-prick thrusts and rapier-like strokes by courts on these persistent patriarchal biases. But, things changed when RONO vs. RONO [2008] 1 KLR 803 delivered the downright bludgeon-blow on these discriminatory practices against women in inheritance; it splendidly paid deference to the international instruments against all forms of discrimination against women especially the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). And, I am happy to say that from thence, there are many cases- and the number is rising by the day as courts implement the Constitution- which state categorically that discrimination in inheritance on the basis of gender or sex or status is prohibited discrimination in law and the Constitution. More specifically I am content to cite the proclamation by the Court of Appeal in the case of STEPHEN GITONGA M’MURITHI vs. FAITH NGIRAMURITHI [2015] eKLR that:-

“Section 38 enshrines the principle of equal distribution of the net intestate estate to the surviving children of the deceased irrespective of gender and whether married and comfortable in their marriage or unmarried...”

Therefore, a son will not have priority over a daughter of the deceased simply because he is male; all- male and female siblings- [and not all of a particular sex]- are equal before the law and are entitled to equal protection of the law. See article 27 of the Constitution. Accordingly, the 3rd Administrator and her children who are claiming the inheritance of late Festus K. M’Ngaruthi, the son of the deceased are only entitled to the share of their late father. They are not, in the circumstances of this case entitled to more share than the distinct share of each of the two daughters of the deceased simply because the late Festus M’Ngaruthi was the son. The three children of the deceased are entitled to share the net intestate estate of the

deceased equally.

14. The protestor has been accused by the widows of trying to take a bigger portion of the estate at their expense is therefore not far-fetched. It is not lost to the court that it had to intervene for the widows who are old and ailing to get some financial assistance from the estate of their husbands. Here I am compelled to state that it is time to recognize the matrimonial property rights of the surviving spouse and set aside the property that constitutes matrimonial property of the surviving spouse from the part belonging to the deceased spouse. In this manner, the struggles and hardships experienced by widows will be greatly mitigated. I am aware the Court of Appeal has already connected Matrimonial Property Act with the Law of Succession Act. The question I keep on asking is whether patriarchy wallows under misguided notion that rights of a widow in matrimonial property dies with the deceased husband. I should also state that, even where matrimonial property is registered in the name of one spouse, the law presumes a trust. The right is therefore protected by the Constitution and the law, and should be given effect by courts of law as a way of implementing, protecting and promoting the Bill of Rights in the Constitution.

15. On the basis of the reasons I have stated, I reject his proposal on distribution.

16. The proposals by the widows seem to be anchored on a consensus among all the dependants except the protestor. There is no total consensus. I will therefore be guided by the law.

17. As the deceased was polygamous, section 40 of the Law of Succession Act apply. The section provides as follows: -

40. Where intestate was polygamous

(1) Where an intestate has married more than once under any system of law permitting polygamy, his personal and household effects and the residue of the net intestate estate shall, in the first instance, be divided among the houses according to the number of children in each house, but also adding any wife surviving him as an additional unit to the number of children.

(2) The distribution of the personal and household effects and the residue of the net intestate estate within each house shall then be in accordance with the rules set out in sections 35 to 38.

18. The sharing is in accordance with the principle of equality enshrined in section 38 of the Law of Succession Act. Accordingly, the assets listed below shall be shared in equal shares amongst the following beneficiaries:

- a. SKG – 1st wife
- b. AN – 2nd wife
- c. SM - son
- d. CK – son (deceased)-to his estate
- e. JKK – Daughter
- f. JK – Daughter
- g. CKG – Daughter

Estate assets

19. The estate assets to be shared as per the foregoing paragraph are:

- i. L-R No. KIRIMARA/KITHITHINA/BLOCK [...]**
- ii. L.R NO. NTIMA/NTAKIRA/[...]**
- iii. PLOT NO. [...] TIMAU MARKET**
- iv. ½ SHARE IN PLOT NO.NTIMA/IGOKI/[...]**
- v. PLOT NO. NTIMA/OGOKI/[...]**
- vi. ½ SHARE IN PLOT NO. NTIMA/IGOKI/[...]**

But in recognition of the rights of the aging widows herein, I order that the two widows, SKG – 1st wife, and AN – 2nd wife, shall share equally the following: -

- vii. CASH IN FAMILY BANK

viii. CASH IN STANDARD CHARTERED BANK

20. The grant of letters of administration issued to SKII on 4/4/2018 is confirmed in the above terms. As these are members of the same family, I order each party to bear own costs. It is so ordered.

Dated and signed at NAROK this 14th day of December, 2020

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F. GIKONYO

JUDGE

Dated, signed and delivered at Meru this 16th day of December 2020

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T. W. CHERERE

JUDGE