



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

SUCCESSION CAUSE 288 OF 1999

IN THE MATTER OF ESTATE OF NATHAN M'IKIANO M'MURITHI-DECEASED

PETER MIRITI M'IKIAO.....PETITIONER

VERSUS

JOSPHAT MUTUMA M'IKIAO.....OBJECTOR

RULING

This matter comes up for distribution of the estate of the deceased M'Ikiano M'Murithu. Grant made to Josephat Mutuma M'Ikiao. On 2nd January 1996 was confirmed on 14th July 2008 and a certificate dated 22nd June 2009 is sued distributing the estate as per houses.

Orders of inhibition were made on 12th September 2000 to restrain all dealings in respect of all assets of the estate until the succession cause is heard and finalized.

An application for revocation dated 8th February 2010 was filed by Janet Ncororo and Jacob Ntongai and by consent of the beneficiaries and dependants of the deceased in court on 6th June 2017. Janet Miriti, Jacob Ntongai and Josphat Mutuma were appointed joint Administrators of the estate of the deceased. Application dated 8th February 2010 revoking grant made to Josphat Mutuma was allowed.

The new Administrators were given time to file application for confirmation. Upon considering the application for confirmation dated 19th July 2017 the court ordered that the Land Registrar and Surveyor to go to the ground and establish how the dependants and/or beneficiaries are settled on the estate so that status quo is not disturbed.

A Report dated 3rd December 2018 and sketch maps were filed in court on 4th December 2018 identifying the different parcels of land and plots forming part of the estate and how they are utilized J. M. Rama filed the Report.

1. According to the sketch and Report LR Akirangondu "A" Igembe central/516 measures 0.48 Ha and it has a live fence utilized by Jacob Ntonga who has put up temporary structures with miraa plantations and seasonal crops. The sketch plan however indicate the names of Roy Mwenda, Isaiah Mwenda and Josephat Mutua on the paper without indicating reason for such indication.
2. LR Njia/Buri-eruri/2509 indicated as occupied by Josephat Mutuma. It has a permanent structure which was constructed by the deceased. There are also 2 other semi permanent structures. The parcel is fenced using barbed wire. 0.02 Ha of the land is developed whereas 0.07 Ha is not developed .
3. L.R. Njia/Buri-Eruri/531 is shown to be utilised by Jacob Ntongai. There are no developments as they were burnt to ashes. The land measures 0.05 Ha.
4. Plot No. 23 B – Murengene market. Has 4 permanent structures and a retail shop. It is utilised by Roy Mwenda. It is 0.18 Ha.
5. L.R. Njia/Buri-Eruri/2750 measuring is shown to be utilised by Roy Mwenda- 0.81 Ha and Henry Gitonga 0.19 Ha, It is said to have temporary structures Miraa and Tea Plantation and it is fenced. Appears to be one of the largest parcel in the estate.
6. LR Njia/Buri-Eruri/1935 shown to be utilised by Roy Mwenda, Isaiah Mungeria, Jacob Ntongai and Josphat Mutuma. It measures 1.3 Ha. That Jacob Ntongai and Isaiah Mwenda are utilizing the largest shares. The plot has live fence, semi- permanent building and seasonal crops and miraa are grown.
7. L.R. Njia/Buri-Eruri/341 is a vast piece of land upon which the deceased homestead stood. The Land Registrar found several temporary structures owned by:-

- Josephat Mutuma
- Jacob Ntongai
- Roy Mwenda
- Isaiah Mungena
- Gladys Gatuma

The parcel measures 2.60 Ha and there are miraa and Tea plantations as well as trees. The entire estate of the deceased is made up of 5.50 Ha of land. The deceased was survived by:-

1. Peter Miriti – son – Now deceased. The wife Janet Ncororo took over.
2. Isaiah Mwongeria – Son
3. Ciomithea Mucubu – Daughter
4. Jane Karambu – Daughter – Unmarried.
5. Jacob Ntongai – Son
6. Kambua Mware – Daughter – Married
7. Ngithima Charles – Daughter – Married.
8. Henry Gitonga – Grandson son to Githima.
9. Josphat Mutuma – Son
10. Grace Gitonga –daughter –Married
11. Janet Gitonga – Daughter – married
12. Martha Kagendo – Daughter – Not married
13. Joyce Ciobaitobi – Wife – to deceased.
14. Gladys Atuma – Wife of deceased.

In consideration of the Ruling of this court delivered on 2nd November 2017 and in consideration of the Report by the Land Registrar dated 3rd December 2018 as well as the modes of distribution proposed by Josephat Mutuma dated 17th July 2017 and mode of distribution in affidavit in support of application for confirmation sworn by Janet Ncororo Mitu and Jacob Ntongai. On 19th July 2017, the estate of the deceased shall be distributed as follows:-

1. L.R. Njia/Buri-Eruri/2509 (also known as plot no. 47 at Maili Tatu that is currently being utilized by Josphat Mutuma shall also be shared equally between him and :
 - Martha Kagendo – from 3rd house
 - Grace Gitonga – from 3rd house
 - Janet Gitonga – from 3rd house
2. L.R. Njia/Buri-Eruri/2750 which is now held by Roy Mwenda and Henry Gitonga to be shared equally between them as well as Janet Ncororo on behalf of her late husband Peter and the children of Peter Miriti.
3. LR Njia/Buri-Eruri/341 measuring 2.6 Ha is where the deceased persons homestead was situated was found to be occupied by Gladys Gatuma the deceased persons widow, Josphat Mutuma, Jacob Ntonga, Roy Mwenda and Isaiah Mungeria. This court proposes that all the sons of the deceased as well as surviving widow do share this particular parcel equally due to its vastness and fact that they are settled in it.
4. LR Njia/Buri-Eruri/531 was found to be utilized by Jacob Ntongai. It measures 0.05 Ha. There are no developments in it. The court orders that this parcel goes to Kambura Mware the deceased persons daughter from the 2nd House.
5. LR. Njia/Buri-Eruri/3005 was found to be under use of Roy Mwenda and it is 0.10 Ha. Because Roy Mwenda and Henry Gitonga have exclusive use of LR Njia 2750, this parcel will now go to:-

- Jane Karambu
- Ciomithea Mucubi
- Judy Nkirote

6. Njia/Buri-Eruri/1935 measures 1.30 Ha and the Registrar found Roy Mwenda, Isaiah Mungeria, Jacob Ntongai and Josphat Mutuma utilizing the same. The court hereby orders that all the sons of the deceased and/or their survivors should benefit from this parcel in equal shares.

7. L.R. Njia/Buri-Eruri/2136 should be shared equally amongst:-

- Martha Kagendo
- Ngithima Charles
- Grace Gitonga
- Janet Gitonga

8. L.R. Akirangondu 'A'/516 should go to :-

- Janet Karambu
- Nguthuma Charles
- Martha Kagendo
- Judy Nkirote
- Ciomithea Micubu
- Kambura Mware
- Grace Gitonga
- Janet Gitonga

To share equally.

9. Plot No. 23 B – Murengene Market – with 4 permanent structures and Retail shop should go to:-

- Roy Mwenda;
- Peter Miriti's – Wife- Children
- Gladys Atuma – widow
- Isaiah Mungeria
- Jacob Ntongai
- Henry Gitonga

In equal shares.

The costs of the distribution to be borne by each of the beneficiaries.

HON A. ONG'INJO

JUDGE

31.1.2019

Before Adwera – Ong'injo J

Mr. Kinoti- C/A

Ms Wambugu Advocate for Objector

Mr. Kithinji Advocate holding brief for Karanja Advocate for petitioner

Court

Ruling Delivered, Dated and Signed in Court on 31ST Day of January 2019.

HON A. ONG'INJO

JUDGE