



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MERU**

**SUCCESSION CAUSE NO. 437 OF 2005**

**In The Matter Of The Estate Of Murunja Kainyiru-Deceased**

**MUGUNA M' MUGAA.....PETITIONER**

**-V-**

**STEPHEN MUTWIRI MUGUNA**

**SALESIO GITUMA**

**ANNAH KAMBURA.....APPLICANTS**

**JUDGMENT**

[1] This Succession Cause relates to the Estate of Murunja Kainyiru (deceased). On 13<sup>th</sup> July 2007, the Applicants herein filed an application for Revocation of Grant. On 7<sup>th</sup> June 2016, the parties agreed to dispense with the application for revocation of Grant whereupon the court directed the Petitioner to apply for confirmation and serve the same on the objectors.

[2] On 22<sup>nd</sup> June 2016, the Petitioner filed an application for Confirmation of Grant and proposed the estate of the deceased to be distributed as follows:

**1) LAND PARCEL NO. NKUENE/KITHUNGURI/55 APPROX 2 ACRES**

- a) STEPHEN MUTWIRI MUGUNA-1/4 ACRE**
- b) SALESIO GITUMA-1/4 ACRE**
- c) JOSHUA KAIMENYI-1/4 ACRE**
- d) DAVID MARANGU-1/4 ACRE**
- e) FLORENCE KATHURE, FRIDAH KARIMI, ZIPPORAH KIURIA-1/4 ACRE**
- f) MUGUNA M' MUGAA-3/4 ACRE**

[3] On 22<sup>nd</sup> December 2016, the Applicants filed an affidavit of protest contending inter alia that the following were the beneficiaries of the deceased estate;

- 1. MUGUNA M' MUGAA-GRANDSON**
- 2. ANNAH KAMBURA-GRANDDAUGHTER IN-LAW**
- 3. STEPHEN MUTWIRI MUGUNA-GREAT GRANDSON**
- 4. SALESIO GITUMA-GREAT GRANDSON**

**5. DAVID MARANGU-GREAT GRANDSON**

**6. FLORENCE KATHURE- GREAT GRANDDAUGHTER (MARRIED)**

**7. FRIDAH KARIMI-GREAT GRANDDAUGHTER (MARRIED)**

**8. ZIPPORAH KIURIA- GREAT GRANDDAUGHTER (MARRIED)**

[4] They further contended that Joshua Kaimenyi who was also named as beneficiary of the deceased by the petitioner was not a beneficiary of the estate and neither was he known to the other beneficiaries. The 3<sup>rd</sup> Applicant further contended that she was entitled to the suit property by virtue of being a granddaughter in law of the deceased and the wife of the petitioner and by the fact that all were given the said land.

[5] It was submitted for the Petitioner that he was given this land by his namesake and that the objectors herein were his wife and children who had no right in objecting him getting this land and that the objectors could only object if it is the petitioner's estate that was in issue and that further that the 3<sup>rd</sup> objector has not produced any evidence to show that there was any will oral or otherwise that bequeathed the estate to her. Consequently, the Petitioner urged the court to dismiss the protest.

[6] On the other hand it was submitted for the Applicants/Objectors that the suit property was given to the family by the deceased hence the petitioner was not the only beneficiary who should benefit and that further the beneficiaries live on the land whereby the 1<sup>st</sup> and 3<sup>rd</sup> protestors had carried out developments on their respective portions of land. It was further submitted that the petitioner had introduced Joshua Kaimenyi as a person who was a dependant of the estate which was not the case and that further he had indicated himself as the only direct beneficiary in the land which was not the case.

[7] I have carefully considered the pleadings and the rival proposed mode of distribution by the parties. The Petitioner here in is a grandson to the deceased whereas the 1<sup>st</sup> and 2<sup>nd</sup> objectors are his children and the 3<sup>rd</sup> objector his wife. The Petitioner contended that he was given the suit property by the deceased. Although there was no specific evidence to show that, but it seems that he established his family on the estate property where they live and have carried out vast developments. A safe inference could be drawn that he was given the land by the deceased as no contrary evidence was adduced.

[8] The objectors also claim that they had been given the suit property by the deceased. There is evidence to prove these allegations. There is also no proof that the objectors were dependants of the deceased.

[9] The objector further contended that Joshua Kaimenyi who had been named by the Petitioner as a beneficiary of the estate was a stranger and unknown to them a fact which remained unchallenged through this succession cause. Therefore, I find and hold that Joshua Kaimenyi is not a beneficiary of the estate and will get nothing in the estate.

[10] Recapitulation of the above facts brings me to the point where I should determine distribution of the estate. The petitioner would be entitled to the estate under the principle of representation where he takes the share of his deceased parent. He is also entitled under section 39 of the Law of Succession Act as he ranks higher than his children and wife in the estate herein. See Section 39 of the Law of Succession Act CAP 160 of the Laws of Kenya which provides as follows;

**39. Where intestate has left no surviving spouse or children**

**(1) Where an intestate has left no surviving spouse or children, the net intestate estate shall devolve upon the kindred of the intestate in the following order of priority (a) father; or if dead (b) mother; or if dead**

**(c) brothers and sisters, and any child or children of deceased brothers and sisters, in equal shares; or if none**

**(d) half-brothers and half-sisters and any child or children of deceased half-brothers and half-sisters, in equal shares; or if none**

**(e) the relatives who are in the nearest degree of consanguinity up to and including the sixth degree, in equal shares.**

**(2) Failing survival by any of the persons mentioned in paragraphs (a) to (e) of subsection (1), the net intestate estate shall devolve upon the State, and be paid into the Consolidated Fund**

[11] I note that his family lives on the estate land. Such occupation or possession of land by family members is protected under regimes of law but does not give them a right of inheritance in this estate. In the circumstances of this case I find that the Petitioner is entitled to the estate absolutely. I therefore order that the estate shall devolve upon the petitioner solely and absolutely. I issue grant to him which is also confirmed in the foregoing terms. It bears repeating that occupation of the land by his family is protected under other regimes of law. No order as to costs.

**Dated Signed and delivered in open court at Meru this 31<sup>st</sup> day of January, 2019**

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**F.GIKONYO**

**JUDGE**

**In presence of**

**M/s Athieno for applicants**

**E.C Mwangi for petitioner – absent**

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**F.GIKONYO**

**JUDGE**