



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

SUCCESSION CAUSE NO. 194 OF 2004

In The Estate of M' Ikiara Kangetu (Deceased)

JOSEPH NJOGU KATHURIMA.....PETITIONER

-v-

GLADYS GAUKU BWIRIA & 3 OTHERS.....INTRESTED PARTIES

JUDGMENT

[1] This Succession Cause relates to the Estate of M' Ikiara Kangetu (deceased). On 8th February 2018, the Grant of Letters Administration issued to Joseph Njogu Kathurima (the petitioner herein) was revoked. On 4th April 2018, the petitioner herein and the 2nd interested party Esther Maringa Mwiti were appointed as joint administrators of the Estate of the deceased. The court further directed the petitioner to serve Summons for Confirmation of Grant within 14 days and upon service the interested parties to file distribution within 14 days thereof.

[2] In a filing dated 15th May 2018, the petitioner proposed the estate to be distributed as follows:

i. NKUENE/U-MIKUMBUNE/ 494 to be distributed equally amongst the following;

- a). M' MUGAMBI M' KIARA**
- b). M' MARETE M' IKIARA**
- c). JOHN KIAMBI**
- d). JOSEPH NJOGU KATHURIMA**
- e). KARIA KATHURIMA**
- f). All daughters to get ½ acre jointly.**

ii. NKUENE/U-MIKUMBENE838 and 839

a) MWONGERA KATHURIMA-WHOLE

iii. PLOT NO 26 MIKUMBENE MARKET-share to be sold and proceeds used for sub division of the estate and balance thereof to be distributed among all the beneficiaries.

[3] The interested parties on the other hand sought to distribute the estate of the deceased as follows:

A) NKUENE/U-MIKUMBUNE/494

a) M'mugambi M' Ikiara

b) Joseph Njogu Kathurima

- c). **Josphat Kaaria Kathurima**
- d). **M' Marete M' Ikiara (Deceased beneficiaries (children))**
- e). **John Kiambi (Deceased) Beneficiaries (wives and children)**
- f). **Mwongera Kathurima**
- g). **Gikunda M' Ikiara (Deceased) Beneficiaries (wife and children) in equal shares**

B) LR NO. NKUENE/U-MIKUMBUNE/839

- a) **Consolata K Mugira**
- b) **Esther Maringa Mwiti**
- c) **Gladys Gauku M' Mbwiria**
- d) **Jennifer Chaku N' Arimi**
- E) **Edith Wanja Musa.....Equal Shares**

C) Nkuene/U Mikumbune/838

- a) **Janet Tirindi**
- b) **Lydia Karegi**
- c) **Miriko M' Kiara**
- d) **Karambu M' IkiaraEqual Shares**

D) 2/3 share of plot 26 MIKUMBUNE MARKET

- i) **Joseph Njogu Kathurima**
- ii) **Esther Maringa Mwitito sell and distribute the proceed equally amongst the beneficiaries of the deceased estate.**

[4] It was submitted for the petitioner that all daughters of the deceased were aged, happily and comfortably married and that further land parcel numbers Nkuene/U-Mikumbene/838 and 839 were as per the wishes of the deceased given to Silas Mwongera Kathurima.

[5] On the other hand, the interested parties argued that in light of the size of the deceased's land, the 2nd administrators summons for confirmation of grant dated 20th July 2018 was fair and ought to be allowed. She submitted that she had no issue with the 7 brothers being allocated the expansive land parcel LR NO. Nkuene/U-Mikumbune/494 measuring over 5.494 since all the 7 sons of the deceased had extensively developed and resided on the same and the daughters of the deceased had no claim over it. It was further submitted that the proposed mode of distribution by the petitioner was unfair as it squeezes the 9 daughters of the deceased in a portion of land measuring ½ acre in Nkuene/U-Mikumbune/494 wherein the sons had developed and left the uneconomical sloppy part.

ANALYSIS AND DETERMINATION

[6] I have carefully considered the proposed mode of distribution by both the petitioner and the interested party. I have also considered the rival submissions by the parties. One thing is agreed between the parties; that plot No. 26 Mikumbene market be sold and proceeds thereof to be shared equally amongst all the beneficiaries. The rest is in controversy.

[7] A cursory look at the distribution being proposed by the petitioner and the reasons given in support thereof reveals strong patriarchy bias against daughters of the deceased. Courts will not shy away to condemn such prohibited discrimination of daughter in inheritance. I need not state that a good student would have noticed that the reason why the grant made to the petitioner was revoked on 8th February 2018 was inter alia because the interested parties (the daughters of the deceased) had not been provided for. His proposal is not only most unfair to the daughters but a smack of the Constitution. How can one take huge track of land and give it to sons leaving paltry ½ acre to nine sisters of his? The petitioner appears to be making the same initial mistake he made; disinheriting the daughters of the deceased because they are women, aged, happily married and comfortably married. His contention that his proposed mode of distribution is as per wishes of the deceased is without basis since there is no evidence to support the allegations. Time has come to remind the beneficiaries that the estate is of the deceased and not their free properties over which they may exercise free will or proprietorship selfishness.

[8] On the other hand the proposed mode of distribution by the interested parties is fair, reasonable and equitable and is in accordance with the provisions of **Section 35 of the Law of Succession Act CAP 160 of the Laws of Kenya.**

[9] Taking into account the totality of the circumstances of this case, the estate of the deceased shall be distributed in accordance with paragraph 4 of the affidavit in support of Summons for Confirmation of Grant by the 2nd Administrator dated 20th July 2018.

[10] More specifically, the estate shall be distributed as follows:-

A) NKUENE/U-MIKUMBUNE/494

To be shared equally amongst the following:-

- a) M'mugambi M' Ikiara
- b) Joseph Njogu Kathurima
- c). Josphat Kaaria Kathurima
- d). M' Marete M' Ikiara (Deceased His beneficiaries (children) to take in equal shares
- e). John Kiambi (Deceased) His beneficiaries (wives and children) to take in equally
- f). Mwongera Kathurima
- g). Gikunda M' Ikiara (Deceased) His beneficiaries (wife and children) to take in equal shares

B) LR NO NKUENE/U-MIKUMBUNE/839

To be shared equally amongst the following:-

- a) Consolata K Mugira
- b) Esther Maringa Mwiti
- c) Gladys Gauku M' Mbwiria
- d) Jennifer Chaku N' Arimi
- e) Edith Wanja Musa

C) NKUENE/U MIKUMBUNE/838

To be shared equally amongst the following:-

- a) Janet Tirindi
- b) Lydia Karegi
- c) Miriko M' Kiara
- d) Karambu M' Ikiara

D) 2/3 share of plot 26 MIKUMBUNE MARKET

- i) Joseph Njogu Kathurima
- ii) Esther Maringa Mwitito sell and distribute the proceed equally amongst the beneficiaries of the deceased estate.

[11] The grant herein is confirmed in accordance with the foregoing terms. This being a succession matter there will be no order as to costs.

Dated, signed and delivered in open court this 30th day of January, 2019

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F. GIKONYO

JUDGE

In presence of

Kithinji for interested party

M/S Muna for Mokuu for petitioner

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F. GIKONYO

JUDGE