



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

SUCCESSION CAUSE NO.313 OF 2014

In The Matter Of The Estate Of Nkiunga Kirichu Ncebere (Deceased)

ALOISE KIUNGA.....PETITIONER

-VS-

KENDI KIUNGA.....OBJECTOR

JUDGMENT

[1] The deceased herein *Nkiunga Kirichu Ncebere* died on 23rd January 2014. He was domiciled in Akiaga Location prior to his death. As per the letter of the Chief Akiaga Location dated 7th July 2014 he left behind the following survivors; *Alois Kiriga Kiunga, Joel Ithilii Kiunga, Joseph Ithilii Kiunga, Godfrey Kimani Kiunga, Reuben Kirimi Kiunga, Gitonga Cosmas Kiunga, Rumano Kamencu Kiunga.*

[2] The deceased also left behind the following assets; *P/No.1053 Ankamia Adj Sect (1.00 ACRES) P/No. 6576 Akaiga Adj Sect (2.0Acres), P/No. 4924 Akaiga Adj Sect. P/No. 4131 Atwambwui Adj. Sect (0.90 Acres), P/No. 99 Mbeu Adj Sect, P/No. 18B Kunati Market in Ankamia Adj Sec, Acc No. 01-5-01-61149700 Standard Bank Meru.*

[3] The petitioner applied for letters of Administration on 17th July 2014 allegedly with consent from all the beneficiaries. The petition was gazetted on 22nd August 2014 and letters of Administration were issued to the petitioner on 23rd September 2014. He also filed Summons for Confirmation of grant with alleged Consent to mode of Distribution on 7th March 2015 by the beneficiaries. The grant was confirmed on 6th May 2015 by Makau J. granting the petitioner all the assets of the deceased.

[4] Objection proceedings were filed on 25th June 2015. The objector averred that the petitioner secretly filed the petition, concealed material facts and never sought consent from the beneficiaries as alleged. She also averred that the petitioner is using the funds in Dhabiti Sacco which is also part of the estate. She attached rental receipts to this effect. Upon her application, Inhibitory Orders on the estate properties were granted by the Court on 2nd July 2015.

[5] The petitioner responded to the objection on 2nd September 2015 and deposed that the account in Dhabiti Sacco in his own and that the deceased had already subdivided the parcel in P/No. 99 Mbeu Adj Section to; P/No. 9743(3.055) Geoffrey Kimathi Kiunga, P/No. 9744 (1.78) Kendi Kiunga, P/No. 9745 (3.055) Rueben Kirimi Kiunga, P/No. 9746 (3.055) Godfrey Joseph Ithilii.

[6] This Honourable Court considered the objection and the responses by the petitioner and on 22nd November 2016 revoked the grant issued to the petitioner herein on grounds inter alia that relevant consent was never sought prior to filing the petition for letters of Administration and that there was no evidence to show that the land was subdivided prior to the demise of the deceased and that if that was the case the petitioner ought to provide a will. The judge granted the petitioner 14 days to provide the alleged will.

[7] The petitioner however subsequently filed an Application dated 16th January 2017 showing search from the lands ministry for Mbeu Adj Section and adding P/No. 6576 Akiaga Adjudication sect. was divided to P/No. 640 (2 Acres) Cosmas Gitonga, P/No. 3744 Jenniffer Kanungu Kimera (1.00 Acre) P/No. 4942 Akiaga Adi Sect to Joel Ithilii Kiunga (1.00Acre), P/No. 4131 Antwamburi Adj Sect. Kiunga Kirichu Ncebere (0.90Acre), P/No. 1053 Ankamia Adj Sect (1.00Acre) Ramano Kamencu, P/No. 2860Githuu Adj. Sect (1.00Acre) Agnes Kaguma Kiunga. Plot No. 18B Kiunati Market to M Kiunga Mbechere.

[8] The objector replied to the application vide a Replying affidavit dated 5th February 2017 stating that the petitioner actually subdivided the properties after the confirmation of grant and that the deceased had actually granted Jenniffer Kungu Kimera (1.00 Acre) and herself (2.00 acre) in P/No. 640. She also questioned why the petitioner had filed the Succession cause and included all the properties if at all they were granted to the beneficiaries during the lifetime of the deceased and why he alleged that they had been bequeathed to him in the initial Summons for Confirmation of grant. She also averred that the monies in the Account at Dhabiti Sacco belonged to the estate.

[9] This Honourable Court delivered a Ruling on the Application on 5th March 2018 in which it dismissed the petitioner's application and gave parties seven(7) days to appoint administrators. Upon expiry of the seven days, on its own motion and pursuant to the powers vested by **Section 66 of the Law of Succession Act**, the court, on 21st March 2018, appointed Cosmas Gitonga Kiunga and Kendi Kiunga as joint administrators of the estate

[10] Kendi Kiunga filed her proposal to the mode of distribution of the estate on 4th June 2018 a protest was filed by the petitioner, Aloise Kiunga on 3rd July 2018 stating that Alice Kathao who is listed as a beneficiary is a former wife hence not a beneficiary to the estate. The petitioner also filed submissions dated 12th November 2018 restating the same averment in his protest.

[11] I take the objection and submission by the petitioner thereto to be oblivious of Section 3 of the Law of Succession Act which defines wife as follows;

“wife” includes a wife who is separated from her husband and the terms “husband” and “spouse”, “widow” and widower” shall have a corresponding meaning;

And also section 29 which recognize former wife as a dependant as follows:-

29. Meaning of dependant

For the purposes of this Part, “dependant” means

(a) the wife or wives, or former wife or wives, and the children of the deceased whether or not maintained by the deceased immediately prior to his death;

Distribution

[12] Given that was the only protest he raised I shall now move to distribution of the estate. I appreciate that the objector was striving for equal distribution of the estate. But, in her proposal some of the beneficiaries have larger share than others. For instance, Joseph Ithalii Kiunga, Godfrey Kimathi Kiunga & Reuben Kimathi Kiunga. This phenomenon has not been explained. In these proceedings and as commanded by law, equal distribution of the estate amongst the beneficiaries reign high. Therefore, I direct that the estate shall be distributed as hereunder;

A) Parcel No 9743,9744,9745,9746 Mbeu 1 Adjudication section Measuring 14 acres shall be shared as follows:-

i. Kendi Kiunga and Alice Kathao Kiunga shall get 3.00 acres in common

ii. Joseph Ithalii Kiunga-2 acres

iii. Geodfrey Kimathi Kiunga-2acres

iv. Reuben Kimathi Kiunga- 2 acres

v. Balance thereof shall be shared equally amongst the following:-

a. Kendi Kiunga

b. Gitonga Cosmas Kiunga

c. Rumano Kamenchu Kiunga

d. Joel Ithalii Kiunga

e. Agnes Kauna Kiungato

f. Aloise Kiriga Kiunga

g. Jeniffer Kanangu Kirema

h. Alice Kathao Kiunga

B) PARCEL NO. 640 AKAIGA ADJUDICATION SECTION- 2acres shall be shared equally between Cosmas Gitonga Kiunga and Regina Ciamuru Kiunga

C) PARCEL NO. 3744 AKAIGA ADJUDICATION SECTION- 1 Acre

Jennifer Kanangu Kiunga

D) PARCEL NO. 4924 AKAIGA ADJUDICATION SECTION- 1 Acre

Joel Ithalii Kiunga

E) PARCEL NO. 11296 AKIAGA ADJUDICATION SECTION- 1Acre

Joel Ithalii Kiunga

F) PARCEL NO. 6576 AKAIGA ADJUDICATION SECTION- 1 acre

Alois Kiriga Kiunga

G) PARCEL NO. 4131 ANTAUMBURI ADJUDICATION SECTION: to be held by the administrators in trust for themselves and all beneficiaries of the estate. The two administrators to manage the property and to share the each year the annual net rental income amongst all the beneficiaries herein.

H) Dhabiti Sacco Mikinduri Branch A/C No. 491850208806

Proceeds thereof to be applied towards renovating plot in parcel No. 4131 Antaumburi Adjudication Section and the balance to be shared amongst all beneficiaries.

I) PARCEL NO. ANKAMIA ADJUDICATION SECTION- 1 Acre

Rumano Kiunga

J) PARCEL NO. GITHUU ADJUDICATION SECTION 2860

Agnes Kaguna Kiunga- to get 1 Acre

K) PLOT NO. 18B KUNATI MARKET

Cosmas Gitonga Kiunga to buy at Kshs. 300,000/= and the beneficiaries to share the proceeds.

L) STANDARD CHARTERED BANK ACCOUNT NO. 01-5-01-611497-00 proceeds to be shared equally amongst:-

a) Kendi Kiunga

b) Gitonga Cosmas Kiunga

c) Rumano Kamenchu Kiunga

d) Joseph Ithalii Kiunga

e) Agnes Kauna Kiunga

f) Reuben Kirima Kiunga

g) Geodfrey Kimathi Kiunga

h) Aloise Kiriga Kiunga

i) Jennifer Kanangu Kirema

j) Alice Kathao Kiunga

[13] The grant made on 21st March 2018, to Cosmas Gitonga Kiunga and Kendi Kiunga is confirmed on the foregoing terms. No orders as to costs. It is so ordered.

Dated signed and delivered in open court at Meru this 30th January, 2019

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F. GIKONYO

JUDGE

In presence of

M/s Njenga for interested party

M/s Mungu for Kiogora for petition

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F. GIKONYO

JUDGE