



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT CHUKA

SUCCESSION CAUSE NO. 677 OF 2015

IN THE MATTER OF THE ESTATE OF THE LATE M'BAUNI M'MERU KANEGENE- (DECEASED)

AND

CHARLES KAGORWE M'RUNJI.....PETITIONER/APPLICANT

VERSUS

GRACE KAMBURA.....PROTESTOR

J U D G M E N T

1. This cause relates to the estate of the late **M'BAUNI M'MERU KANEGENE** (deceased) who died on 23rd April 2015 resident at Chuka Township. The petition filed and the Chief's letter dated 15th September, 2015 accompanying the petition indicates that the deceased died intestate leaving the following dependants surviving him namely;

- (i) Julius Njagi M'Runchi
- (ii) Peter Njeru M'Runchi
- (iii) Charles Kagorwe M'Runchi
- (iv) Speranza Muthoni Nyaga
- (v) Simon M'Runchi
- (vi) Esther Nkima M'Runji
- (vii) Miriti M'Runchi
- (viii) Gregory Nyaga M'Runci &
- (ix) Mwenda M'Runchi

2. The assets comprising the estate in this cause are listed as follows:-

- (i) Karingani/Ndagani/4798 &
- (ii) Karingani/Ndagani/8320

3. The petitioner in this cause Charles Kagorwe M'Runji was appointed the administrator on 21st January, 2016 and through summons for confirmation of grant dated 9th June 2017 the administrator applied for confirmation of grant proposing to distribute the estate which appears to have been subdivided into several units from the original 2 units as follows:-

(a) **Karingani/Mariani/5731**

(i) Esther Nkima Samuel jointly

(ii) Simon Mbogo M'Runchi

(b) **Karingani/Mariani/1983**

Charles Kagorwe M'Runchi

(c) **Karingani/Ndagani/5770**

Joyce Muthoni Kamundi

(d) **Karingani/Ndagani/7398**

(i) Boniface Kinyua E. Mwarania - 0.10 acres

(ii) John Miriti Bore - 0.19 acres

(e) **Karingani/Ndagani/8172**

Boniface Kinyua E. Mwarania

(f) **Karingani/Ndagani/8170**

Julius Nanua M'Runji

(g) **Karingani/Mariani/2780**

Peter Mugambi Mutitu

(h) **Karingani/Ndagani/8169**

Humphrey Murangiri

(i) **Karingani/Ndagani/8171**

Charles Kagorwe M'Runji

(j) **Karingani/Mariani/8320**

Sporenza Muthoni Nyaga

(k) **Karingani/Mariani/6000**

Patrick Murithi Muchiri

(l) **Karingani/Mariani/6729**

Patrick Murithi Muchiri

(m) **Karingani/Mariani/9100**

Patrick Murithi Muchiri

(n) **Karingani/Mariani/5770**

Joyce Muthoni Kamundi

4. James Mugendi Stephen one of the protestors herein filed a protest stating that he had purchaser's interest on parcel No. Karingani/Ndagani/8320 and enclosed or exhibited copies of agreement, payment acknowledgements and a consent from Land Control Board that indicates that the deceased herein sold the stated parcel to him.

5. Grace Kambura, another protestor filed another protest claiming that she was a wife to the deceased and faulted the administrator for not recognizing her. She further accused the administrator for distributing the estate to purchasers to her detriment and that of her children.

6. The court listed the protest for hearing by way of oral evidence. It transpired at the hearing that the petitioner/administrator perhaps under some influence on the first date of hearing could not really tell this court much about the estate. He told this court that he is aware that the deceased had sold some parcels to some purchasers but he could not tell which parcels were sold and to whom. This forced this court to adjourn the hearing. When the hearing resumed at a later date, the administrator told this court that he could not trace the details of some purchasers though he stated the purchasers had some agreements.

7. On the other hand Grace Kambura testified that she used to work for the deceased as a maid and that because the deceased did not have a wife, she became his wife and got 3 children together. When pressed to show birth certificates of the children, the witness stated that she had none. She availed one witness Chibira Muiru Kabunja, who testified that she knew Grace Kambura as the wife of the deceased and knew she had got 3 children. Apart from that there is not much offered in terms of cogent evidence to demonstrate that she was married to the deceased.

8. This court has considered the protests filed in this court and the response made by the petitioner. This court notes that one of the protestor's James Mugendi Stephen, did not turn up for hearing of his protest but that notwithstanding I find from the affidavit of protest filed sworn on 28th October, 2017 and the annexures (Agreement, acknowledgment of payments, and consent from Land Control Board Meru South) that Stephen Mugendi Stephen purchased parcel No. Karingani/Ndagani/8320 from deceased. The petitioner himself admitted during hearing that he was aware that the deceased had sold some of the parcels and that the purchasers had agreements. This court is satisfied that Stephen Mugendi Stephen has legitimate interests in the parcel No. Karingani/Ndagani/8320 and is entitled to that parcel as a creditor to the estate. The deceased took him to Land Control Board who granted consent to the transaction. The acquisition was therefore legitimate and lawful.

9. In regard to Grace Kambura, the other protestor in this cause, this court was told that the said Grace Kambura was a wife to deceased but the protestor did not adduce any evidence to show how she was married to the deceased, whether it was a customary marriage or engagement or whether it was a formal marriage. She testified that she was employed as a maid to look after the deceased who from the death certificate appears was fairly old. This court inquired from the witness who appeared fairly young how old she was and she stated that she was 36 years old. Although the question of age difference is not much of an issue, to determine if a person is married to the other, it is important to note that he who alleges must prove. When asked to show birth certificates of the children to prove that the deceased was their father, the 2nd protestor simply could not. She did not give reasons why the children did have birth certificate. Her evidence in this court left a lot to be desired that in the end I find that she has not proved her case that she was a legal wife to the deceased to the required standard.

10. This court for the aforesaid reason hereby confirms the grant issued on 21st January, 2016 as per the following mode of distribution:

(a) **Karingani/Mariani/5731**

(i) Esther Nkima Samuel jointly

(ii) Simon Mbogo M'Runchi

(b) **Karingani/Mariani/1983**

Charles Kagorwe M'Runchi

(c) **Karingani/Ndagani/5770**

Joyce Muthoni Kamundi

(d) **Karingani/Ndagani/7398**

(i) Boniface Kinyua Mwaranja - 0.1 acres

(ii) John Miriti Bore - 0.19 acres

(e) **Karingani/Ndagani/8172**

Boniface Kinyua Mwaranja

(f) **Karingani/Ndagani/8320**

James Mugendi Stephen

(g) **Karingani/Mariani/8170**

Julius Namu M'Runji

(h) **Karingani/Ndagani/2780**

Peter Mugambi Mutitu

(i) **Karingani/Ndagani/8169**

Humprey Murangiri Seberino

(j) **Karingani/Mariani/8171**

Charles Kagorwe M'Runchi

(k) **Karingani/Mariani/6000**

Patrick Murithi Muchiri

(l) **Karingani/Mariani/6729**

Sparenza Muthoni Nyaga

(m) **Karingani/Mariani/9100**

Patrick Murithi Muchiri

(n) **Karingani/Mariani/5770**

Joyce Muthoni Kamundi

There shall be no order as to costs. Each party to bear own costs.

Dated, signed, and delivered at Chuka this 28th day of January, 2019.

R.K. LIMO

JUDGE

28/1/2019

Judgment signed dated and delivered in the open court in presence of petitioner in person, the protestor and all the parties.

R.K. LIMO

JUDGE

28/1/2019