



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

SUCCESSION CASE NO. 172 OF 1993

IN THE MATTER OF THE ESTATE OF M'MUTUNGA M'AMAI (DECEASED)

WILLIAM M'RUKARIA.....APPLICANT

RULING

1. The deceased herein Daniel M'Mutunga M'Maitai died 1971 leaving behind the following survivors:-

1. Marion Muthoni – wife - died in 1992
2. John Murungi Mutungi
3. William M'Rukaria
4. Nahashon M'ikiao
5. Misheck Ikiugu – deceased
6. Leah M'Ruchieue – deceased
7. Naitore
8. Monica Kaguri Mutungi – deceased
9. Murugu Daniel
10. Tabitha Kajuju –daughter
11. Sarah Karimi Kiogora – deceased
12. Peter Mbijiwe Mutungi – deceased

2. The deceased also owned Kiirua/Naari/148 measuring 3.28 Ha approximately 9 acres.

3. In senior Resident Magistrates court C. A No. 1 of 1986 EM Githinji SRM as he then was lodged an order of inhibition on register of land in question to stop any sale transactions of the land by Nahashon M'ikiao who wanted to sell to recover money he gave to his deceased father.

4. Nkubu Succession Cause No. 45 of 1974 distribution was already done.

1. Marion Muthoni was to get 1.00 acre – died before distribution done.
2. Peter Mbijiwe was to get 1.6 acres
3. William M'Rukaria – 1.6 acres
4. Misheck M'Ikiugu – 1.6 acres of unsound mind also died - had no family

5. Nahashon M'Ikiao – 1.60 acres

6. 2.6 acres to redistributed to the beneficiaries including the only surviving daughter Tabitha Kajuju.

5. William M'Rukaria Mutungi and personal representative to Peter Mbijiwe Daniel who sold their portions to Samuel Bundi should effect the transfer of the Succession Cause as a normal transfer.

6. John Murugu M'Mutungu – objected to application for confirmation and distribution on the ground it is him, Nahashon and Misheck who live on suit land.

7. That Mbijiwe got land No. 488 in Mbaria whereas William Rukaria got land No. 125.

8. Application for distribution dated 24.8.1998 was allowed on 16.10.2000 by G.A. Omwitsa - commissioner of Assize and Certificate of confirmation dated 16.10.2000 issued

9. John Murugu by application 22.3.2001 contested the confirmation of grant and argued that if the courts attention was drawn to findings in Nkubu succession cause no. 45 of 1974 the cause would have been determined. Parties informed the court that only distribution had a dispute and were attempting out of court settlement.

10. By consent order recorded on 7.6.2006 application dated 22.3.2001 was withdrawn and orders distributing the estate made on 24.8.1998 set aside and petitioner ordered to file application for confirmation a fresh. Fresh application dated 12.7.2004 was filed by William M'Rukaria through the form of Ms Mwenda Mwarania and he referred to mode of distribution made in Nkubu SRM Succession cause No. 45 of 1974. He said since his mother who was to get one acre died and his brother Misheck who was to get 1.6 acres also died leaving no spouses and children their shares should be distributed equally to the remaining 4 beneficiaries. He urged the court to confirm grant in terms of paragraph 17 of his affidavit sworn on 12.7.2004 and filed on 16.5.2005.

11. John Murugi M'Mutungu filed his proposed mode of distribution in affidavit sworn on 11th October 2007 and said that the deceased gave William M'Rukaria land No. Maitei/125. While Peter Mbijiwe was given land No. Kiirua/Mbaria/488 and that they are not entitled to inherit LR Kiirua/Naari/148 as they don't even reside on it. He averred that it is him Meshack M'Ikiao deceased and Nahashon who live on suit land and are entitled to inherit. He proposed that the land be distributed to the 3 brothers who are to get 2.5 acres each and the remaining 0.50 acres to be given to their sister Leah Kadhune who was not married. He said L.R. Kiirua/Naari/148 was 8 acres and not 9 acres as alluded. He averred further that sale of portions of land by William M'Rukaria and the late Mbijiwes sons is meant to disinherit them.

12. Another consent dated 22.2.2008 was entered withdrawing application for confirmation dated 12.7.2004 and also cancelling registration of LR Kiirua/Naari/148 into the name of County council of Meru. The Registration of suit land was to revert to the name of the deceased.

13. Further summons for confirmation dated 19th December 2011 was again filed by William M'Rukaria Mutungi and at paragraph 14 of the supporting affidavit he proposed distribution as follows:-

a) Leah M'Ruchiu – 0.50 acres

b) Gacheri M'Ikiugu – 0.50 acres

c) John Murugu – 1.78 acres

d) Nahashon M'Ikiao – 1.78 acres

e) Japhet Guantai -1.00 acres

f) William M'Rukaria – 1.28 acres a half of Balance.

g) Geoffrey Kirimi Mbijiwe – 0.64 acres or quarter of balance.

h) Japhet Kimathi Mbijiwe 0.64 acres a quarter of the balance.

14. John Murugu in his reply to proposed mode of distribution shown on 18.6.2012 said that consent to confirmation and distribution filed by William M'Rukaria was a forgery as the beneficiaries who are alleged to have signed consent are illiterate with no knowledge of how to write and read and could not have appended their signatures.

15. He said further that the person listed as beneficiary by the name Japheth Guantai M'Itwamwari was not known to him and it not a member of the family. He averred that his sister Sarah Mutungi and brother Mesheck Mutungi died and left no dependants known as Gacheri M'Ikiugu. He said Peter M'Mbijiwe also passed on and left 2 sons Geoffrey Kirimi and Japheth Kimathi. He said further that before the deceased died he had issued William M'Rukiaria with land no. Kiirua/Maitei/125 and Peter M'Mbijiwe with LR Kiirua/Runyenye/488. He said Monica Mutungi was also given land elsewhere to reduce overcrowding and it is only the dependants who were not issued with land who are entitled to benefit from LR 148. He proposed distribution as follows:-

a) Nahashon M'ikiao – 2 acres

- b) John Murungi -2 acres
- c) Gacheri M'Ikiugu – acres
- d) Leah M'Runiu – 1 acre
- e) Naitore Mutugi – 1 acre

16. Directions were taken on 26.10.2015 that application for confirmation and distribution dated 19.12.2011 would be canvassed by way of via voce evidence. Upon further directions being taken consent dated 22.11.2017 was adopted as an order of the court to effect:-

- a) Proceedings herein be deemed as substantive succession cause.
- b) Rukaria Mutungi be deemed the petitioner
- c) John Murugi be the objector (protester)
- d) Grant of Letters of administration intestate to the estate of Daniel M'Mutungi M'Maitei alias Mutungi Maitai (Deceased) be issued to Rukaria Mutungi and John Murugi M'Mutungi jointly.
- e) The net intestate estate of the deceased subject to this Succession cause is LR Kiirua/Naari/148 measuring 3.28 Ha.
- f) The mode of distribution to be determined by viva voce evidence.
- g) The grant of Administration herein be confirmed simultaneously with the judgement on distribution.
- h) Parties be at liberty to file witness statements prior to the hearing of the succession cause.

17. In his evidence in court the objector confirms that Gacheri is brother to his late brother Misheck, Leah and Naitore are his sisters. He said he had not produced evidence to prove that the deceased gave land to William, M'Mbijiwe and Monica. He said LR Kiirua/Naari/225 which he claimed was given to his brother was registered in the name of Rutere Munyua on 22.1.1974. He said Rutere Munyua is not their relative. He said that William sold LR 225 to Rutere Munyua. He said he didn't have Green card for LR 488. He said that Succession Cause No. 45 of 1974 at Nkubu was settled by consent. He said his application for review of consent judgment was not determined.

18. The petitioner William M'Rukaria also testified and relied on his affidavit. He said that LR 148 was distributed by consent in Nkubu Succession cause No. 45 of 1974. He said that the one acre that was initially distributed to their mother before she died should go to his sisters Leah and Gacheri.

19. He said Naitore is not known to him. He said Gacheri is daughter to his late brother Misheck. He said Misheck was to get 1.6 acres in Nkubu Succession cause No. 45 of 1974. He said his sisters Monica and Leah are alive. He said his father didn't give him any land as he had only one piece of land. He admitted that Monica Naitore is his sister. He said that he bought the land that he occupies. He said LR 148 is occupied by John Murugi. He said it is John who leases the land. He said his brother Nahashon also occupied the land but he died and left 2 children who are still in occupation. He said Nahashon's wife is also alive.

20. From the evidence on record, it is very clear that succession cause herein had already been determined in Nkubu Succession Cause no. 45 of 1974 save that subsequently before the confirmed grant could be executed the deceased persons wife who had been given one acre of land died. Since then Peter M'Mbijiwe, Misheck M'Ikiugu and Nahashon sons to the deceased have also died. If it was not for the deaths the sons of the deceased would have been entitled to share the land equally after removing the one acre due to their deceased mother. John Murugi claimed that William M'Rukaria and the late Peter M'Mbijiwe had benefited inter vivos but he failed to produce evidence to that effect.

21. This court therefore finds that the consent order entered into in Nkubu Succession cause No. 45 of 1974 will be upheld with slight variations as follows:-

- a) The one acre that was due to Marion Muthoni will now be shared equally between Monica Naitore and Leah M'Ruchi.
- b) 1.60 acres that was due to Misheck M'Ikiugu (deceased) shall now to go Gacheri Ikiugu.
- c) Land that was due to Peter M'Mbijiwe Mutungi – 1.60 acres shall now be shared equally amongst his wife and children if alive or their survivors.
- d) William Rukaria will get 1.60 acres
- e) 1.60 acres due to Nahashon M'Ikiao Mutungi shall be given to the wife and children to share equally.

22. There shall be no orders as to costs. Each party to bear costs. Orders accordingly.

HON. A.ONG'INJO

JUDGE

**RULING SIGNED, DELIVERED AND DATED THIS 23RD DAY OF
JANUARY 2019.**

In the presence of:

C/A: Kinoti

Mr Kithinji holding brief

Mr. Mwenda – Mwarania for petitioner

Mr. F.K. Gitonga Advocate for protester – N/A

Petitioner – William

Rukaria – Present in person.

John Murungi – Present in person

Nahashon Ikiao –Deceased

Misheck Ikuigu – Deceased

Leah – N/A

Order

Copies of ruling to be supplied to counsel and parties upon paying copying charges.

HON. A.ONG'INJO

JUDGE