



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

SUCCESSION CAUSE NO. 321 OF 1996

IN THE MATTER OF THE ESTATE OF M'IKIARA KIMIRI (DECEASED)

JULIUS MURIUNGI.....1ST PETITIONER/RESPONDENT

DAVID MBIJIWE.....2ND PETITIONER/RESPONDENT

FANUEL RIUNGU.....3RD PETITIONER/RESPONDENT

VS

JOYCE KINANU M'IKIARA..... 1ST INTERESTED PARTY

MARY NTIBUKA MWONGERA..... 2ND INTERESTED PARTY

RULING

1. On 10th day of May 2018 the court issued grant in the names of Julius Muriungi M'Ikiara , Mary Karuru Riungu, Joyce Kinanu M'Ikiara and Mary Ntibuka. The court ordered that the parties make a full inventory of the properties forming the estate and file their modes of distribution.
2. The interested parties, Julius Muriungi and Mary Karuru filed their proposed mode of distribution on 26th July 2018, 31st October 2018 and 27th November respectively.
3. It is an undisputed fact that the deceased herein had three wives. Section 40 of the Law of Succession Act CAP 160 of the Laws of Kenya makes provision on how the intestate estate of a polygamous deceased should be distributed. It provides that;

“Where intestate was polygamous

1. Where an intestate has married more than once under any system of law permitting polygamy, his personal and household effects and the residue of the net intestate estate shall, in the first instance, be divided among the houses according to the number of children in each house, but also adding any wife surviving him as an additional unit to the number of children
2. The distribution of the personal and household effects and the residue of the net intestate estate within each house shall then be in accordance with the rules set out in sections 35 to 38.”

4. In Re estate of John MusambayiKatumanga (deceased) [2014] eKlr the Court held:-

“Under section 40 of the Act, if the deceased had several wives, as opposed to households, the estate would devolve depending on the number of children. Ideally, the estate would be divided equally among all the members of the entire household, lumping the children and the surviving spouses together. After that the family members would retreat to their respective houses where Section 35 of the Act would be put into effect, so that if there was a surviving spouse in a house she would enjoy life interest over the property due to her children. The house without a surviving spouse would split its entitlement in terms of Section 38 of the Law of Succession Act, the children would divide the estate equally amongst themselves. Section 40 was not designed for the circumstances of the instant estate, but it would appear more appealing for the purpose of distribution of the said estate than Section 35.

27. The spirit of Part V, especially Sections 35, 38 and 40, is equal distribution, of the intestate estate amongst the children of

the deceased. There have been debates on whether the distribution should be equal or equitable. My reading of these provisions is that they envisage equal distribution for the word used in Sections 35(5) and 38 is “equally” as opposed to “equitably”. This is the plain language of the provisions. The provisions are in mandatory terms – the property “shall ... be equally divided among the surviving children.” Equal distribution is envisaged regardless of the ages, gender and financial status of the children”

5. In his affidavit in support of summons of grant dated 31st October 2018 Julius alleged that Joyce Kinanu was not a child of the deceased and let her out of his proposed distribution. In her statement dated 16th November 2018 Esther Gaiti stated that she was offended that the 1st respondent would claim that Joyce Kinanu was not the deceased biological daughter. That the 1st respondent and Joyce Kinanu are almost agemates and the 1st respondent would not know if she was sired by the deceased.

6. Under our law **Sections 107 108 & 109** of the **Evidence Act Cap 80** mandates that he who alleges must prove. This accusation is difficult to decipher as the 1st respondent has not given any evidence to support his claim that Joyce Kinanu is not a child of the deceased. It was also noted by this court that the 1st respondent on this basis went ahead and excluded the said Joyce Kinanu from his proposed mode of distribution.

7. From the record, it is evident that the majority of the deceased dependants are in support of the interested party’s mode of distribution. Mary Karuru in her proposed mode of distribution stated that the distribution by the interested party is more fair, practical and is supported by a majority of the beneficiaries of the deceased.

8. In my view, section 40 of the Law of Succession Act does not take away the discretion of the court to distribute the estate fairly as it has been clothed to provide adequately for the dependants or beneficiaries. Consequently, I find for the interested parties and adopt their mode of distribution. I hereby order that the estate of the deceased be distributed as follows;

I. ABOTHUGUCHI/KITHIRINE/1255 TO BE SHARED EQUALLY AMONG:

i. ESTATE OF DAVID MBIJIWE (To be held in trust by the wife for Mbijiwe Elizabeth Karoki for herself and children in equal shares.)

ii. JULIUS MURIUNGI

iii. MARY KARURU RIUNGU- to hold in trust for self and children of Fanuel Riungu in equal shares

II. ABOTHUGUCHI/KITHIRUNE/1349 TO BE SHARED EQUALLY AMONG:

i. ESTATE OF DAVID MBIJIWE(To be held in trust by the wife for Mbijiwe Elizabeth Karoki for herself and children in equal shares.)

ii. JULIUS MURIUNGI

iii. MARY KARURU RIUNGU- (To hold in trust for self and children of Fanuel Riungu in equal shares)

III. ABOTHUGUCHI/KITHIRUNE/917 TO BE SHARED EQUALLY AMONG:

i. ESTATE OF DAVID MBIJIWE – (To be held in trust by the wife for Mbijiwe Elizabeth Karoki for herself and children in equal shares.)

ii. JULIUS MURIUNGI

iii. MARY KARURU RIUNGU (To hold in trust for self and children of Fanuel Riungu in equal shares)

IV. ABOTHUGUCHI/KITHURUNE/159

i. MARY NTIBUKA - 1ACRE

ii. DAVID MBIJIWE(To be held in trust

by the wife for Mbijiwe Elizabeth

Karoki for herself and children in equal shares.) TO SHARE BALANCE

iii. JULIUS MURIUNGI

V. ABOTHUGUCHI/KITHURINE/318

i. GLADYS M'IKARIA - 2ACRES

ii. ESTHER M'IKARIA - 2 ACRES

iii. JULIUS MURIUNGI - 4ACRES

iv. MARY KARURU RIUNGU – 4 ACRES – (To hold in trust for herself and children of Fanuel Riungu in equal shares)

VI. PLOT NO. 18 KITHIRUNE MARKET – GLADYS M'IKIARA

VII. PLOT NO. 209/136/122 - JULIUS MURIUNGI

iv. PLOT NO. 209/230/8 - ESTATE OF DAVID MBIJIWE – (To be held in trust by the wife for Mbijiwe Elizabeth Karoki for herself and children in equal shares.)

VIII. PLOT NO. 209/118/54 - MARY KARURU RIUNGU to hold in trust for self and children of Fanuel Riungu in equal shares.

IX. PLOT NO. 8285/597 - JULIUS MURIUNGI

X. PLOT T./683 MERU MUNICIPALITY TO BE SHARED EQUALLY AMONG;(GAKOROMONE)

i. ESTATE OF GLADYS KARUTA M'IKARIA

ii. ESTATE OF ELIZABETH NJIRU M'MARETE

iii. GRACE NGUANTANI JULIUS

iv. ESTATE OF RAEL MWARIUMWE MWITI

v. MARY NTIBUKA MWONGERA

vi. JOYCE KINANU M'IKIARA

XI. PLOT NO. 11/50 MERU MUNICIPALITY

In consideration that the sons of the deceased have one $\frac{1}{4}$ share of the deceased properties in Nairobi, the daughters of the deceased are also entitled to benefit from income generating property. In that regard proceeds of rent to be shared equally amongst the widows, daughters and sons of the deceased. The Administrator to ensure rents collected, water and electricity paid and the property kept in good condition and the balance shared.

XII. $\frac{1}{2}$ SHARE OF PLOT NO. S144974 NANYUKI TO BE SHARED EQUALLY AMONG:

i. ESTATE OF GLADYS KARUTA M'IKARIA

ii. ESTATE OF ELIZABETH NJIRU M'MARETE

iii. GRACE NGUANTANI JULIUS

iv. ESTATE OF RAEL MWARIUMWE MWITI

v. MARY NTIBUKA MWONGERA

vi. JOYCE KINANU M'IKIARA

vii. Estate of David Mbijiwe (to be held in trust by the wife for Mbijiwe for herself and children in equal shares)

viii. Julius Muriungi

ix. Mary Karuru –(to be held in trust for herself and children of Fanuel Riungu in equal shares)

XIII. NGOBIT/SUPUKO/516

i. ESTATE OF GLADYS KARUTA M'IKARIA

ii. ESTATE OF ELIZABETH NJIRU M'MARETE

iii. GRACE NGUANTANI JULIUS

iv. ESTATE OF RAEL MWARIUMWE MWITI

v. MARY NTIBUKA MWONGERA

vi. JOYCE KINANU M'IKIARA

vii. Estate David Mbijiwe – (To be held in trust by the wife for Mbijiwe Elizabeth Karoki for herself and children in equal shares.)

viii. Julius Muriungi

ix. Mary Karuru- to be held in trust for herself and children of Fanuel Riungu.

XIV. NGOBIT/SUPUKO/11/150

i. ESTATE OF GLADYS KARUTA M'IKARIA

ii. ESTATE OF ELIZABETH NJIRU M'MARETE

iii. GRACE NGUANTANI JULIUS

iv. ESTATE OF RAEL MWARIUMWE MWITI

v. MARY NTIBUKA MWONGERA

vi. JOYCE KINANU M'IKIARA

vii. Estate of David Mbijiwe – (To be held in trust by the wife for Mbijiwe Elizabeth Karoki for herself and children in equal shares.)

viii. Julius Muriungi

ix. Mary Karuru – to be held in trust for herself and children of Fanuel Riungu

XV. KAG 677P LORRY

To be sold by Administrators and shares to go to beneficiaries and/or survivors of beneficiaries in equal shares.

XVI. MOTOR VEHICLES

KXA 119 - JULIUS MURIUNGI

KZN 403 - JULIUS MURIUNGI

Costs of cause to be borne by each party.

HON. A.ONG'INJO

JUDGE

RULING DELIVERED, DATED AND SIGNED IN COURT ON 28TH FEBRUARY 2019.

In the presence of:

C/A: Kinoti

Mr Gichunge Advocate for 1st and 2nd interested parties/Administrators.

Mr Muthamia holding brief for Gikunda for petitioner, Mr Mwirigi Advocate for 3rd Interested party.

Interested party – Present in person

1st Petitioner. – N/A

HON. A.ONG'INJO

JUDGE

Mr Mwirigi

In view of the order that properties revert to name of deceased, we pray that same as well as inhibitions be lifted.

Order

Copies of ruling to be supplied upon payment of copying charges. Orders of inhibition made on 8.11.2016 and issued on 1.12.2016 are hereby lifted.

HON. A.ONG'INJO

JUDGE