



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

SUCCESSION CAUSE NO. 32 OF 2013

**IN THE MATTER OF THE ESTATE OF M'NKANAHA M'THIURU (DECEASED)**

DAVID MUTHURI M'NKANATHA .....PETITIONERS

VERSUS

JANE KARUKI NKANATHA.....1<sup>ST</sup> PROTESTOR

MARGARET NYOROKA.....2<sup>ND</sup> PROTESTOR

STELLA KIRUMBA.....3<sup>RD</sup> PROTESTOR

**RULING**

The deceased M'Nkanata M'Thiuru died on 4<sup>th</sup> June 2001 as a result of Hepatic Failure. He was aged 70 years. He was survived by one widow namely Monica Mwithiabi and:-

1. David Muthuri – son
2. Mercy Kinya – Daughter in law
3. Jane Karuki – Daughter
4. John Mutuma – Grandson – adult
5. Margaret Nyoroka M'Mbori – daughter – married.
6. Tabitha Muthoni M'Nkanata – Daughter at home

The deceased died and left the following assets registered in his name:-

1. Abothuguchi/Katheri/3562
2. Abothuguchi/Katheri/3561
3. Abothuguchi/Katheri/3560
4. Abothuguchi/Katheri/3559
5. Abothuguchi/Katheri/3558

Grant of Administration was made to David Muthuri M'Nkanata on 15<sup>th</sup> day of October 2013. Summons for confirmation of grant was subsequently filed on 13<sup>th</sup> March 2018 and it was supported by the affidavit of David Muthuri M'Nkanata who at paragraph 5(a) to (e) distributed the estate as follows:-

1. Abothuguchi/Katheri/3558 – to Mercy Kinya -0.488 Ha

2. Abothuguchi/Katheri/3559 – 0.810 Ha to:-

a) Jane Karuki -0.202 ha

b) Mercy Kinya – 0.303 Ha

c) David Muthuri – 0.303

d) Monica Mwitabi – life interest on Mercy Kinya, Jane Karuki and David Muthuri's portions on LR 3559

3. Abothuguchi/Katheri/3560 – 0.472 to go to John Mutuma

4. Abothuguchi/Katheri/3561-0.506 Ha to go to David Muthuri Mkanata absolutely

5. Abothuguchi/Katheri/3562 -0.405 Ha to go to Dominic Murithi

Margaret Nyoroka by an affidavit sworn on 27<sup>th</sup> March 2018 protested to mode of distribution proposed by David Muthuri on the ground that she is daughter to the deceased and therefore entitled to inherit from the estate. Further that Simon Macharia Muthuri was son to the petitioner and should therefore inherit through the petitioner and not directing from the deceased who is his grandfather.

Stella Kirumba in her affidavit in protest Sworn in March 2018 said she is daughter to Tabitha Muthoni – deceased – who was daughter to the deceased herein. She said she grew up under the care of the deceased and expected to be considered as a beneficiary. She said that the petitioner in his proposed mode of distribution was not agreeable to her as she had not been provided for. She said that herself and her aunt Jane Karuki and her grandmother lived on LR 3559. She said the son to the petitioner; one Simon Macharia Muthuri entered LR 3559 without permission in 2013 and constructed a semi-permanent house which he considers his home. She proposed that LR Abothuguchi/3559 be distributed equally to herself, Jane Karuki and Margaret Nyoroka.

Jane Karuki M'Nkanata also swore an affidavit on 27.3.2018 protesting manner of distribution. She also suggested that LR Abothuguchi/Katheri/3559 be distributed to her, Stella Kirumba and Margaret Nyoroka Kiambi to share equally. Jane Karuki in cross examination confirmed that David Muthuri the petitioner had been given 2 acres of land by the deceased. To the family of Nkonge – deceased – husband to Mery Kinya was also given over one acre. She said that 3<sup>rd</sup> portion was given to Dominic Murithi- one acre.

That the 4<sup>th</sup> portion of one acre was given to John Mutuma and 2 acres in 5<sup>th</sup> portion was left registered in the name of the deceased. She said Simon Macharia the son of the petitioner has put up a stone house on the portion that remained in the deceased person's name. She said the deceased person's widow didn't give the portion to Simon Macharia. She said the 5<sup>th</sup> portion that remained for the deceased should be given to the daughters of the deceased. She said she was not satisfied with 0.50 acres. She said that her views were not accepted at the family meeting. She said Stella Kirumba was her deceased sisters Tabitha Muthoni's daughter. She said that John Mutuma was also son to the late Tabitha Muthoni. She said land given to John Mutuma was not on account of his mother. She said Stella was brought up by the deceased from childhood.

She said Mercy Nkirote was daughter to Tabitha Muthoni. She gave names of Tabitha Muthoni's children:-

1. Stella Kirumba

2. John Mutuma

3. Mercy Nkirote

4. Susan Kinanu

Jane Karuki said the deceased shared his land physically but titles had not been processed. She said that her and her 2 sisters were not given any shares of land by the deceased.

Margaret Nyoroka also testified and said the dispute in the estate is over a portion of land that the deceased left for himself and his wife. She said that prior to Tabitha's death she was staying on deceased person's land with her mother. She said that the 2 acres that the deceased left is used by Macharia the son of the petitioner. She said the widow to the deceased didn't allow Macharia to put up a house on LR 3559. She said Tabitha was staying at the deceased land where she brought up Stella Kirumba. She said that John Mutuma son to the late Tabitha Muthoni was given land as a gift by the deceased at the time he was also giving his sons land but not on behalf of his mother. She said she didn't denounce her right to the estate. Margaret Nyoroka said she was the eldest child to the deceased. Stella Kirumba testified and adopted her statements and affidavit in protested. She reiterated what Jane Karuki and Margaret Nyoroka said in their evidence in chief.

The petitioners case was scheduled to be heard on 28<sup>th</sup> January 2019 but on due date, neither the petitioner nor counsel were present. The claim by the protesters is therefore not challenged. This court finds that since the sons of the deceased benefitted inter vivos, LR No. Abothuguchi /Katheri/3559 should be distributed equally amongst the daughters of the deceased or their survivors. The son of the petitioner Simon Macharia constructed his house on LR 3559 after the death of the deceased and the death of the widow of the deceased before the court distributed the estate. He acted without authority and should therefore vacate the suitland.

Simon Macharia should inherit through his father the petitioner herein. The costs of application for confirmation and distribution shall be borne by each beneficiary

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**HON. A.ONG'INJO**

**JUDGE**

RULING SIGNED, DELIVERED AND DATED THIS 28<sup>TH</sup> DAY OF FEBRUARY 2019.

**In the presence of:**

CA:- Kinoti

Petitioner:- Mr Muthomi Advocate for Petitioner

Petitioner – Present in person

Protestors:- M/s Basilio Gitonga for Protesters – N/A

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**HON. A.ONG'INJO**

**JUDGE**

**Mr Muthomi**

I pray to be supplied with a copy of the ruling and proceedings. We seek 45 days stay so that my client's son can vacate.

**Order**

Certified copy of proceedings and ruling to be supplied upon paying copy of charges.

Simon Macharia given 30 days stay of execution to vacate Suitland.

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**HON. A.ONG'INJO**

**JUDGE**