



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MERU**

**SUCCESSION CAUSE NO. 416 OF 2004**

**IN THE MATTER IF THE ESTATE OF M' RWITO M' MUGAMBI ALIAS THAMBAU M' RWITO M' MUGAMBI ALIAS M' RUITU M' MUGAMBI THAMBAU (DECEASED)**

**JOSHUA GITONGA M' RWITO.....PETITIONER**

**-V-**

**ELIZABETH MWATHIMBA RWITO.....OBJECTOR**

**RULING**

1. This Succession cause relates to the **Estate of M' Rwito M' Mugambi (deceased)**. The deceased was survived by the following children;

**Joshua Gitonga RWito,**

**John Mugambi Rwito**

**Ezekiel Mwangela Rwito**

**Joel Limiri Rwito**

**Esther Kananu Rwito**

**Doris Kaari Rwito**

**Bernard Mutia- Deceased-father of Maurice Mwirigi)**

2. The deceased further left behind the following properties;

**NJIA/BURIERU/1911**

**NJIA/BURIERU/2547**

**NJIA BURIERU P/NO. 1016**

**NJIA CIA MWENDWA/392**

**NJIA CIA MWENDWA/2343**

**Funds in Barclays Bank of Kenya Account No. xxxxxx**

**Share Certificate No's xxxxxxxx and xxxxxxxx Kenya Commercial Bank Limited**

**Share Certificates N0. xxxxxxxx Barclays Bank.**

3. On 22<sup>nd</sup> June 2005, Grant of Letters Administration were issued to the Petitioner provoking the Objector to file the instant Objection contending *inter alia* that a widow had priority on the deceased intestate estate to which she had a life interest and that she had a right on a first priority to file for succession of her deceased's husband's property.

4. The Objector's case was follows; **OW1 was Ezekiel Mwongera Rwito**. He testified while adopting his witness statement filed in court on 27<sup>th</sup> June 2018, that he was a son of the deceased whereas the Objector was his mother and that the Petitioner was his brother. It was his further evidence that they had 7 siblings but one of their brother was deceased and had left a son namely; Mwirigi Maurice and that they had sat down as a family and agreed on how to distribute the estate and that further his brother (the petitioner) had clandestinely filled a succession cause without informing them and that further his mother had applied for Revocation of Grant and that further they had held various meetings and agreed on how to share the property.

5. OW2 was **Elizabeth Mwathimba M' Rwito**. She adopted her witness statement filed in court on 27<sup>th</sup> June 2018 and testified that she was the deceased's widow and that when the deceased died she reported to the local chief who gave her a letter to file succession and that later on she learnt that the Petitioner had filed another succession without informing them and she objected to the same because they were not consulted. It was her further evidence that being the wife of the deceased, she was the one who ought to have filed the instant succession cause and further contended that she was not in agreement to the proposed mode of distribution by the Petitioner since they had met as a family and agreed to distribute the estate of the deceased as follows:

**1. NJIA/BURIERU/1911**

a) **JOEL LIMIRI RWITO-WHOLE**

**2. NJIA/BURIERU/2547**

a) **JOSHUA GITONGA RWITO-0.30 ACRES**

b) **JOHN MUGAMBI RWITO-0.30 ACRES**

c) **EZEKIEL MWONGERA RWITO-0.20 ACRES**

d) **JOEL LIMIRI RWITO-0.10 ACRES**

e) **ESTHER KANANU RWITO- 0.10 ACRES**

f) **DORIS KAARI RWITO-0.10 ACRES**

g) **MAURICE MWIRIGI-0.10 ACRES**

**3) NJIA BURIERU P/NO. 1016**

a) **JOSHUA GITONGA RWITO-0.57 ACRES**

b) **EZEKIEL MWONGELA RWITO-0.67 ACRES**

c) **ELIZABETH MWATHIMBA M' RWITO-0.46 ACRES**

d) **MAURICE MWIRIGI-0.40 ACRES**

**4) NJIA MWENDWA/392**

a) **JOSHUA GITONGA RWITO-0.15 ACRES**

b) **JOHN MUGAMBI RWITO-0.72 ACRE**

c) **EZEKIEL MWONGERA RWITO-0.15 ACRES**

d) **MAURICE MWIRIGI-0.52 ACRES**

e) **ESTHER KANANU RWITO-0.32 ACRES**

f) **DORIS KAARI RWITO-0.32 ACRES**

**5) NJIA CIA MWENDA/2343**

a) **ESTHER KANANU RWITO-0.25 ACRES**

**b) DORIS KAARI RWITO-0.25 ACRES.**

6. OW3 was **Joel Limiri Rwito**. It was his evidence that he was one of the sons of the deceased and that they had agreed as a family on how to share the property of their father. It was his further evidence that they had included a child of their deceased brother namely; Maurice Mwirigi to inherit the portion that could have gone to his father and that they did not agree on the proposed mode of distribution by the Petitioner since he did not consult them.

7. The Petitioner's case on the other hand was as follows; PW1 was **Joshua Gitonga**. It was his evidence that he was the eldest son of the deceased and that he had 5 parcels of land which he urged the court to distribute as follows:

**a) NJIA CIAMWENDWA/392-**

**EZEKIEL MWONGELA-WHOLE**

**b) NJIA CIAMWENDWA/2343**

**1) ESTHER KANANU -0.25 ACRES**

**2) DORIS KAARI-0.25 ACRES**

**c) NJIA BURIERU/1911**

**1) ELIZABETH MWATHIMBA-0.50 ACRE**

**2) JOEL LIMIRI -0.40 ACRE**

**NJIA/BURIERU2547**

**1) JOSHUA GITONGA-0.80 ACRES**

**2) JOHN MUGAMBI-0.40 ACRES**

**e) NJIA BURIERU/1016**

**1) JOEL LIMIRI-0.50 ACRES**

**2) JOSHUA GITONGA-1.5 ACRES**

**f) Funds if any in Barclays Bank Savings Account 378263 go to JOSHUA GITONGA**

**g) Share Certificate No. 00068609 Kenya Commercial Bank be transferred to Ezekiel Mwangela**

**h) Shares Certificate No. 00064872 Barclays Bank be transferred to Joshua Gitonga.**

8. PW2 **James Ntongai** while adopting his witness statement dated 10<sup>th</sup> July 2017 testified that he was a villager with the Petitioner and that the deceased had left 5 pieces of land which should be shared by all members of his family.

9. PW3 **Zakayo Kainga** testified that he was a cousin to the Petitioner and that the deceased had left behind 4 sons and 3 daughters and that further the estate of the deceased parcels of land should be shared among his family.

10. After close of the respective parties' case, the court directed them to file written submissions. It was submitted for the Objector that the law was very clear on who had priority when man of the house had died and that a widow had priority on the deceased's intestate estate to which she had a life interest and that it was on record that the Objector herein filed Succession Cause No. 124 of 2001 and while waiting for due process learnt that the Petitioner who was her son had filed the instant cause and the 2 were consolidated. It was further submitted that the proposed mode of distribution by the Petitioner was contrary to Section 40 of the Law of Succession Act which states that each should get an equal share and that the personal effects comprised in the shares and the bank accounts should go to the mother (the objector herein). Consequently, it was submitted that since Petitioner had shown that he was not a trustworthy person; the Grant should be revoked and granted to the Objector herein.

11. On the other hand it was submitted for the Petitioner that since a Grant of Letters Administration was issued by the court on 22<sup>nd</sup> June 2005, in the names of the Petitioner the same should be confirmed in terms of the mode and statement of the Petitioner dated 10<sup>th</sup> July 2017, as the same was fair and equitable to all the beneficiaries of the estate of the deceased.

12. I have carefully considered the evidence on record, the submissions by the parties and the proposed mode of distribution by both the Petitioner and the Objector herein. It is indeed not in dispute that the Objector herein is a widow of the deceased whereas the Petitioner is a

son the deceased. It is therefore not in doubt that the Objector ranks in priority pursuant to the Provisions of Section 66 of the Law of Succession Act as opposed to the Petitioner. All the Objector's witnesses (who were sons of the deceased) testified that they had sat down and agreed as a family as to who the estate of the deceased should be distributed. Their evidence towards this respect remained unconverted throughout the hearing. The Petitioner's witnesses on the other hand really had no probative value to the Petitioner's case since they were not even related to the deceased and their evidence was essentially limited to contending that the Petitioner was the deceased's eldest son and that he was very close to him. They could therefore not purport to speak on behalf of the deceased estate. PW2 indeed stated in cross examination that it was upon the court to determine how the estate of the deceased ought to be distributed.

13. As alluded to earlier, it is not indeed in dispute that the deceased was survived by a widow and children. Section 35 of the Law of succession Act provides as follows:

**Where intestate has left one surviving spouse and child or children**

Subject to the provisions of [section 40](#), where an intestate has left one surviving spouse and a child or children, the surviving spouse shall be entitled to—

35(1) (a) the personal and household effects of the deceased absolutely; and

(b) a life interest in the whole residue of the net intestate estate:

Provided that, if the surviving spouse is a widow, that interest shall determine upon her re-marriage to any person

**14. Subsection (5) thereof further provides Subject to the provisions of sections 41 and 42 and subject to any appointment or award made under this section, the whole residue of the net intestate estate shall on the death, or, in the case of a widow, re-marriage, of the surviving spouse, devolve upon the surviving child, if there be only one, or be equally divided among the surviving children.**

15. Taking into totality all the circumstances in this case and in view of the fact that there was undisputed evidence by the Objector and her witnesses that the family had sat down and agreed on how to distribute the deceased's estate, I find the proposed mode of distribution by the Objector filed in court on 27<sup>th</sup> June 2018, to be fair and reasonable and accordingly the estate of the deceased shall be distributed as follows:

**NJIA/BURIERU/1911**

a) JOEL LIMIRI RWITO-WHOLE

**2. NJIA/BURIERU/2547**

a) JOSHUA GITONGA RWITO-0.30 ACRES

b) JOHN MUGAMBI RWITO-0.30 ACRES

c) EZEKIEL MWONGERA RWITO-0.20 ACRES

d) JOEL LIMIRI RWITO-0.10 ACRES

e) ESTHER KANANU RWITO- 0.10 ACRES

f) DORIS KAARI RWITO-0.10 ACRES

g) MAURICE MWIRIGI-0.10 ACRES

**3) NJIA BURIERU P/NO. 1016**

a) JOSHUA GITONGA RWITO-0.57 ACRES

b) EZEKIEL MWONGELA RWITO-0.67 ACRES

c) ELIZABETH MWATHIMBA M' RWITO-0.46 ACRES

d) MAURICE MWIRIGI-0.40 ACRES

**4) NJIA MWENDWA/392**

a) JOSHUA GITONGA RWITO-0.15 ACRES

- b) JOHN MUGAMBI RWITO-0.72 ACRE
- c) EZEKIEL MWONGERA RWITO-0.15 ACRES
- d) MAURICE MWIRIGI-0.52 ACRES
- e) ESTHER KANANU RWITO-0.32 ACRES
- f) DORIS KAARI RWITO-0.32 ACRES

**5) NJIA CIA MWENDA/2343**

- a) ESTHER KANANU RWITO-0.25 ACRES
- b) DORIS KAARI RWITO-0.25 ACRES.

16. In addition, the personal effects comprised in the shares and bank accounts shall go to the Objector. In light of the Petitioner's dishonest conduct, the Grant of Letters Administration issued to him on 22<sup>nd</sup> June 2005 is hereby revoked with an order that a fresh Grant be issued to the Objector herein and a certificate of confirmation distributing estate as above do issue.

17. This being a succession matter, involving close family members, I will not antagonize the parties further by making an order as to costs.

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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:-

Petitioner:- Mr Kiogora Arithi for Petitioner N/A

Applicant:- Ms Kithaka for Protesters.

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**HON. A.ONG'INJO**

**JUDGE**