



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

SUCCESSION CAUSE NO. 725 OF 2012

IN THE MATTER OF THE ESTATE OF PAUL MWONGERA M'IMPWI ALIAS PAUL MWONGERA (DECEASED)

STELLA MUKIRI.....APPLICANTS/

GLADYS KANINI.....OBJECTORS

-VS-

JEREMIAH NGARUNI.....

HARUN KINOTI MBIJIWE.....

IBRAHIM MWIRIGI KIRIKA.....

JOSEPH KAIJI KIRIGIA.....

DOUGLAS MWITI MUTUMA.....RESPONDENTS

RULING

1. On 11th October, 2018, this court entered judgment whereby it distributed the deceased's estate as follows:-

ABOTHUGUCHI/RUIGA/1705.020 HA

Sarah Mukiri - 0.1HA

Gladys Kanini - 0.1 HA

ABOTHUGUCHI/RUIGA/1706 – 0.20 HA

Julius Mukiri - 0.1 HA

Sarah Mukiri

Gladys Kanini Balance in equal shares.

Julius Mukiri

2. On 21st January, 2019, the 1st Respondent applied for the review of that judgment on the grounds, *inter alia*, that property **L.R. Abothuguchi/Ruiga/1705** was not part of the estate and should not have been distributed and that by virtue of **section 39(1) (c) of the Law of Succession Act**, Gladys Kanini, as step sister of the 1st Respondent should not have been given a share in the estate of the deceased.

3. The supporting affidavit of the 1st respondent deposed that, the judgment wrongly held that both **L.R. Abothuguchi/Ruiga/1705** and **L.R. Abothuguchi/ Ruiga/1706** were held in common between the 1st respondent and the deceased. That the truth of the matter was that it was only **L.R. Abothuguchi/Ruiga/1706** that was held in common and not **L.R. Abothuguchi/Ruiga/1705**. A certificate of search for **L.R.**

Abothuguchi/Ruiga/1705 was produced in support of that contention.

4. The objectors opposed the application vide the replying affidavit of **Gladys Kanini** sworn on 12th February, 2019. She deposed that since the 1st respondent had distributed both **L.R. Abothuguchi/Ruiga/1705** and **L.R. Abothuguchi/Ruiga/1706**, respectively in his distribution of 8th December, 2014 which had been revoked by the said judgment, the application had no merit and should be dismissed.

5. I have considered the affidavits on record and the submissions of learned Counsel. It is true that in the impugned judgment, this court distributed both **L.R. Abothuguchi/Ruiga/1705** and **L.R. Abothuguchi/ Ruiga 1706** as stated at the beginning of this ruling.

6. I note from the record that as at the time the judgment was made and the estate distributed, there was no search certificate in respect of **L.R. Abothuguchi/Ruiga/1705**. The only search certificate on record was in respect of **L.R. Abothuguchi/Ruiga/1706** which showed that the property was registered in the joint names of the deceased and the 1st respondent in equal shares.

7. The 1st respondent has now produced the search certificate in respect of **L.R. Abothuguchi/Ruiga/1705**. The said certificate clearly shows that at no time the said property was ever registered in the name of the deceased. That clearly was an obvious error apparent on the face of the record. The deceased did not have any interest in that property and it should not have been included in the estate property.

8. In this regard, to the extent that the judgment of 11th October, 2018 distributed **L.R. Abothuguchi/Ruiga/ 1705**, that was in error that should be corrected *ex-debito justitiae*. That judgment is therefore corrected accordingly.

9. The 1st respondent alleged that **Gladys Kanini** was not a sister of the deceased but rather a step sister. That the real sister and brother of the deceased are **Stella Mukiri and Jeremiah Ngaruni**.

10. **Section 39 of the Law of Succession Act, Cap 160** provides as follows:-

“39(1) Where an intestate has left no surviving spouse or children, the net intestate estate shall devolve upon the kindred of the intestate in the following order of priority –

(a) father; or if dead

(b) mother; or if dead

(c) brothers and sisters, and any child or children of deceased brothers and sisters, in equal shares; or if none

(d) half brothers and half sisters, and any child or children of deceased half brothers and half sisters, in equal shares; or if none

(e) the relatives who are in the nearest degree of consanguinity up to and including the sixth degree, in equal shares.

...” (Emphasis added)

11. From the foregoing, it is clear that if there are brothers and/or sisters of an intestate, his estate cannot go to his step brothers and sisters. The brothers and sisters of an intestate take priority on the estate of an intestate as opposed to the step brothers and step brothers in the case where an intestate leaves no spouse or children.

12. In the present case, it is not disputed that **Gladys Kanini** was a step sister of the deceased while **Stella Mukiri and Jeremiah Ngaruni** were the sister and brother of the deceased, respectively. In this regard, the two had priority to the said **Gladys Kanini**. **Gladys Kanini** did not dispute this fact in her Replying Affidavit.

13. One other thing that should be had in mind is that **L.R. Abothuguchi/Ruiga/1706** was owned by the deceased and the 1st respondent jointly in equal shares. That means that what is to be distributed is the share of the deceased but the share of the 1st respondent remains intact.

14. Accordingly, in view of the foregoing, the judgment of this court made on 11th October, 2018 is hereby reviewed as follows:-

a) the distribution of the property **L.R. Abothuguchi /Ruiga/1705** is struck out of the said distribution.

b) all the entries hitherto entered on **L.R. Abothuguchi/Ruiga/1706** are hereby expunged from the register and the property reverts back to the name of the deceased, **Paul Mwangera M’Impwi alias Paul Mwangera and Jeremiah Ngaruni**.

c) the Certificate of confirmation of grant dated 18th December, 2018 is hereby rectified as follows: -

L.R. Abothuguchi/Ruiga/1706 (0.20ha)

i) Stella Mukiri - 0.05 ha

ii) Jeremiah Ngaruni - 0.15 ha

15. There will be no order as to costs this having been a genuine mistake on the part of the court.

SIGNED at Meru

A. MABEYA

JUDGE

DATED and DELIVERED at Meru this 28th day of February, 2019.

A. ONG'INJO

JUDGE