



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

SUCCESSION CAUSE NO. 276 OF 2002

In The Matter Of The Estate Of M'twamari Makangu

ALICE MUKAMI M'ITWAMARI.....PETITIONER

-VS-

FAITH ITHIMA MWITA.....1<sup>ST</sup> OBJECTOR

JAMES KANUNU M'ITWAMARI.....2<sup>ND</sup> OBJECTOR

CORNELIUS MBAYA M'ITWAMARI.....3<sup>RD</sup> OBJECTOR

STEPHEN MAKUYU M'ITWAMARI.....4<sup>TH</sup> OBJECTOR

CECILIA KAIMURU M'ITWAMARI.....5<sup>TH</sup> OBJECTOR

JUDGMENT

1. The deceased herein *Jacob M'Itwamari M'Mukanga* died on 17<sup>th</sup> August 2002. As per the letter of introduction by the Area Chief Gatimbi Location where he was domiciled left behind; *Alice Mukami M'Itwamari*

2. The petitioner petitioned for letters of administration with will annexed on 13<sup>th</sup> September 2002 allegedly with the consent of Henry Mwiriti Jacob. He listed the beneficiaries as Alice Mukami, Henry Mwiriti, Faith Mwiti and Mugambi Mwita, and the following assets **L.R. Abothuguchi/ Mariene/394**.

3. The petition was gazetted on 1<sup>st</sup> November 2002. The petitioner filed application for confirmation of grant on 25<sup>th</sup> April 2003 proposing to distribute the estate amongst Faith and Mugambi (2 acres) Henry Mwiriti (2 Acres) and the balance to herself. The grant was confirmed by Kasanga Mulwa J. on 29/9/2003 and a Certificate of Confirmation of grant issued on the same day.

4. Objection proceedings were lodged on 11<sup>th</sup> December 2003. The Objectors also prayed for inhibitory Orders to be registered on property: (1) **L.R.NO.ABOTHUGUCHI/MARIENE/1503**; (2) **L.R.NO.ABOTHUGUCHI/MARIENE/1504**; and (3) **L.R.NO.ABOTHUGUCHI/MARIENE/1505** (excised out of Abothuguchi/Mariene/818). They further prayed for revocation of the grant. They averred that the deceased had two (2) wives made up as follows:-

1<sup>st</sup> House,

James Kanangu M'Itwamari,

Corneleius Mbaya M' Itwamari,

Stephen Mukangu M'Itwamari, and

Elijah Muthuri M' Itwamari (deceased and represented by Cecilia Kamuri)

2<sup>nd</sup> House

Alice Mukami M' Itwamari,

**Jasper Mwita (deceased Represented by Faith Ithima Mwita), and**

**Henry Miriti Jacob.**

That the deceased also left behind the following Assets i.e. **Abothuguchi/ Ruiga/348, Plot No. 26 A Gatimbi Market, Plot No. 26 B Gatimbi Market.**

5. The court considered the objection proceedings and issued inhibitory Orders on the suit premises on 23<sup>rd</sup> January 2014. It also revoked the grant on 23<sup>rd</sup> September 2018 and appointed Cornelius Mburugu and Henry Miriti Jacob as joint administrators to the estate.

6. The joint administrators made their proposals on distribution of the estate which I have considered. Both have also filed written Submissions to fortify their proposals on Distribution.

#### **ANALYSIS AND DETERMINATION**

7. From the record, following are the assets of the deceased:-

**a. L.R. NO. ABOTHUGUCHI/MARIENE/818**

**b. L.R. NO. ABOTHUGUCHI/RUIGA/348**

**c. PLOT NO. 26 B – GATIMBI MARKET**

**d. PLOT NO. 26A-GATIMBI MARKET**

8. And the deceased had two houses made up as follows:-

**1<sup>st</sup> House,**

**James Kanangu M'Itwamari,**

**Corneleius Mbaya M' Itwamari,**

**Stephen Mukangu M'Itwamari, and**

**Elijah Muthuri M' Itwamari (deceased and represented by Cecilia Kamuri)**

**2<sup>nd</sup> House**

**Alice Mukami M' Itwamari,**

**Jasper Mwita (deceased Represented by Faith Ithima Mwita), and**

**Henry Miriti Jacob.**

9. What is left for determination is the distribution of the estate.

#### **Distribution of the Estate**

10. The deceased herein was polygamous and he has left behind a spouse and children. The estate shall therefore be distributed in terms of section 40 of the law of Succession Act that provides;

**40.(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.**

11. Section 40 of the Law of Succession Act embodies equality, equity and fairness in distribution of the estate of the deceased. See **In re the Estate of the Late George Cheriro Chepkosiom (Deceased) [2017] eKLR.**

12. Accordingly, the estate of the deceased shall be distributed amongst the immediate beneficiaries as hereunder;

**L.R. NO. ABOTHUGUCHI/MARIENE/818**

**Shall be distributed equally amongst; Alice Mukami M’ Itwamari, Estate of Jasper Mwita (herein Represented by Faith Ithima Mwita), and Henry Miriti Jacob.**

**L.R. NO. ABOTHUGUCHI/RUIGA/348**

**Shall be distributed equally amongst; Margaret Wanja Jacob, Estate of James Kanangu M’Itwamari, (herein represented by Harriet Kinja James) Cornelius Mbaya M’ Itwamari, Stephen Mukangu M’Itwamari, and Estate of Elijah Muthuri M’ Itwamari (herein Represented by Cecilia Kamuri)**

**PLOT NO. 26 B – GATIMBI MARKET**

**Alice Mukami & Henry Miriti**

**PLOT NO. 26A-GATIMBI MARKET**

**To Faith Ithima Mwita, Cecilia Kaimuri Muthuri, Cornelius Mbaya, Harriet Kinja James, Stephen Mukangu equally**

13. The grant made on 23<sup>rd</sup> September 2018 to Cornelius Mburugu and Henry Miriti Jacob is confirmed in the above terms. This being a succession cause each party shall bear own costs. as joint administrators to the estate.

**Dated, signed and delivered in open court at Meru this 27<sup>th</sup> February, 2019**

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**F.M GIKONYO**

**JUDGE**

**IN PRESENCE OF**

Kurauka for Rimita for interested party

Kimaita for Ringera for petitioner

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**F.M GIKONYO**

**JUDGE**