



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT MERU**

**SUCCESSION CAUSE NO. 544 OF 2013**

*(Original Succession Cause No. 2812 of 1995 at Nairobi)*

**IN THE MATTER OF THE ESTATE OF M'MUGA M'MAGIRI (DECEASED)**

**SILAS MUTHURI M'LIKANYA .....APPLICANT**

**VERSUS**

**LAND REGISTRAR, MERU CENTRAL DISTRICT.....RESPONDENT**

**SOFIA GAKII .....INTERESTED PARTY**

**JUDGMENT**

**Cause dogged with acrimony**

[1] The initial Grant letters of administration intestate were issued to Jerica Kagwiria M'Muga on 25<sup>th</sup> July 2007 in **SUCCESSION CAUSE NO. 2812 OF 1995 AT NAIROBI**. The grant was however revoked by the court 4<sup>th</sup> December 2016 and ordered that the grant letters of administration intestate be issued to Jerica Kagwiria M'Muga jointly with Charity Igoki M'Muga and Douglas Mwiti M'Muga or any one or two of them, were given liberty to file a fresh application for confirmation within 90 days.

[2] On 1<sup>st</sup> December 2015 the court noted that in spite of the above orders issued by Onyancha J the administrators had failed to apply for confirmation of the grant. It resulted in several warrants of arrests being issued against the administrators. The court also ordered the filing of inventories on the assets of the deceased which were filed by the beneficiary/ respondent, Jerica Kagwiria and Douglas Mwiti, This was to assist the court ascertain the assets of the estate as there had been allegations that some of the estate property had been sold to third parties.

[3] The 1<sup>st</sup> administrator, Jerica Kagwiria, filed an application for confirmation of grant dated 5<sup>th</sup> July 2018 which was supported by her affidavit sworn on the same date. She provided her mode of distribution which is a replica of the schedule in the certificate of confirmation of grant dated 25<sup>th</sup> July 2007 that was revoked.

[4] Charity Igoki proposed her mode of distribution in her supporting affidavit to the application for confirmation of grant dated 10<sup>th</sup> July 2018. Her mode of distribution was supported by Sofia Gakii through her affidavit of protest to confirmation of grant sworn on 8<sup>th</sup> October 2018. She protested against the application filed by Jerica who she stated excluded her sister Judith Kananu M'Muga from the estate. On the other hand, Douglas Mwiti M'Muga filed his affidavit of protest sworn on 21<sup>st</sup> November 2018 where he suggested his own mode of distribution.

**ANALYSIS AND DETERMINATION**

[5] This case was dogged by acrimony and mistrust and breach of trust. But, I hope that, by this judgment, the long drawn controversies will be resolved. Two issues arise;

**i. The purchasers interest; whether they are entitled to the estate property sold to them; and**

**ii. How the estate is to be divided.**

**Purchasers' interest**

[6] It is not in dispute that **Plot No. 2890/83 Timau Market** was sold by the deceased to Lawrence Marangu. Such property is given to the

purchaser and if the deceased had not completed the transaction, the court will call upon the administrators to complete the transaction. There is however a startling situation; the applicant Silas Muthuri M'Linkanya claims that he bought 3 acres out of **Land Title No. Abothuguchi/Mariene/868** which he has developed extensively. In Jerica's mode of distribution she allocates the said 3 acres to the applicant. In the mode of distribution provided by the representatives of the 1<sup>st</sup> and 2<sup>nd</sup> house they have distributed **parcel No. 868** to the 2<sup>nd</sup> and 3<sup>rd</sup> house. Jerica is in the 3<sup>rd</sup> house and she has distributed the 3 acres to the applicant. Jerica has already enjoyed fruits of the sale. Jerica seems to be the wrong doer here. She has given the 3 acres to the Applicant and no objection is coming from her house. In the circumstances, I direct that the share of the third house in the said land will go to the applicant as proposed by Jerica.

### **Of beneficiaries**

[7] I will now establish the rightful beneficiaries and the estate property. All administrators listed the same people as beneficiaries of the estate apart from Charity Njoki who added Judith Kananu as a daughter of the deceased. Sofia confirmed that she is indeed her sister who was left out. These claims were not refuted by any of the other parties. Accordingly, the deceased was survived by:

#### **First House**

1. **Charity Igoki** - Wife
2. Susan Gauku - Daughter
3. Fredrick Muthuia - Son (deceased)
4. Salome Kanyua - Daughter
5. Abel Mwenda - Son
6. Meshack Mutua - Son (deceased)
7. John Kirimi - Son

#### **Second House**

8. **Lydia Ncurubi M'Mua** - Wife (deceased)
9. Douglas Mwiti M'Muga - Son
10. Julius Mutuma - Son
11. Faith Karambu Daughter (deceased)
12. David Nturibi - Son (deceased)
13. John Mugambi - Son
14. Sofia Gakii - Daughter
15. Judith Kananu - Daughter

#### **Third House**

16. **Jerica Kagwiria** - Wife
17. Nancy Kajuju - Daughter
18. James Murithi - Son
19. Erick Muthuri - Son
20. Elosy Muthoni - Daughter
21. Leonida Nkirote - Daughter

### **Of estate property**

[8] Various inventories were filed on estate property. But, the inventories contain contradictory information. But what seems to be in

consensus is that the following form part of the estate:

1. Abothuguchi/Lower - Kiiija/225
2. Abothuguchi/Mariene/868
3. Abothuguchi/Mariene/372
4. Land Reference Kiamuri 'A' 118
5. Plot No. 22 'A' Kangeta Market
6. Plot No. 3 Kangeta Market
7. Plot No. 456 Isiolo
8. Plot No. 2 'A' Rugusu Market
9. Plot No. 2890/83 Timau Market
10. Plot No. 3 'B' Gatimbi Market

[9] According to Douglas Mwiti the deceased had shares at **Meru Co-Union**. Jerica added that the deceased had accounts at **Kenya Commercial Bank, Standard Chartered Bank and National Bank of Kenya Limited**. The inventory filed by the beneficiary/respondent incorporated other properties, assets and investments. She supports the mode of distribution provided by Charity Njoki who incorporated two other properties that is *Abothuguchi/Mariene/1429* and *Thika Scheme V Plot – L. r No. 7240/2 with Langata Development Company*. The former is a subdivision of **Abothuguchi/Mariene/ 868** and the latter is said to be non-existent at least according to Douglas Mwiti.

[10] There is no agreement as to what comprises the estate of the deceased. I have already found that Plot No. 2890/83 Timau Market was sold to Lawrence Marangu by the deceased and the administrators shall complete the transaction, if not yet completed. Therefore i order the said plot shall go to Lawrence Marangu and the Certificate of Confirmation of Grant shall so indicate. Ultimately, from the record, I find that the following assets constitute the estate property:-

#### **LAND PARCELS**

1. **Abothuguchi/Mariene/ 868**
2. **Rugusu Market No. 2 'A'**
3. **Plot No. 22 'A' Kangeta Market**
4. **Plot No. 3 Kangeta Market**
5. **Plot No. 3 'B' Gatimbi Market**
6. **Abothuguchi/ L. Kiiija/ 225**
7. **Abothuguchi/Mariene/372**
8. **Land Reference Kiamuri 'A'**
9. **Plot No. 456 Isiolo**
10. **Thika Scheme V Plot – L. r No. 7240/2 with Langata Development Company**

#### **BANK ACCOUNTS**

1. **Standard Chartered Bank**

A/C No. 0120012400001

2. **Kenya Commercial Bank**

A/C No. 181175209

**3. HFCK Savings**

A/C No. 1/11889

**4. National Bank of Kenya Limited**

A/C No. 74049674

**PERSONAL INVESTMENTS**

**1. Mukiria Farmers Co-op Society Limited**

Share Certificate No. 992

**2. Kenya Commercial Bank Shares**

A/C No. 085909

**3. Government Treasury Bill**

Issue No. 1057

**4. Nkando Farmers' Co-operative Society Limited**

Membership No. 2983

**5. KNFU Membership No. 38 -00251618-10**

**6. Kshs. 14,400/- with Ntoringwi Scheme**

**7. Meru Central Farmers' Co-operative Society Ltd**

Member No. 1016

**Distribution**

[11] The estate identified above is to be distributed. The deceased having been polygamous the guiding provision of the law is **Section 40 of the Law of Succession Act** which stipulates that

**“(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.”**

[12] The section embodies fairness, equity and equality for each child and the surviving wife such that the estate is divided equally amongst all the beneficiaries. Therefore, reference to house means all children together with the surviving widow.

[13] The administrators are not in agreement on how the estate ought to be divided, except some few areas of convergence. Guided by the law and the general circumstances of this case, the estate shall be distributed as follows:

**LAND PARCELS**

**11. Plot No. 2890/83 Timau Market**

**Lawrence Marangu**

**12. Abothuguchi/Mariene/ 868**

**Silas Muthuri M’Likanya - 3 acres**

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

13. Rugusu Market No. 2 'A'

To be shared equally amongst the three houses

14. Plot No. 22 'A' Kangeta Market

To be shared to the 2<sup>nd</sup> House

15. Plot No. 3 Kangeta Market

To be shared to the 3<sup>rd</sup> House

16. Plot No. 3 'B' Gatimbi Market

To be shared to the 1<sup>st</sup> House

17. Abothuguchi/ L. Kijja/ 225

To be shared equally amongst the three houses

18. Abothuguchi/Mariene/372

To be shared equally amongst the three houses

19. Land Reference Kiamuri 'A'

To be shared equally amongst the three houses

20. Plot No. 456 Isiolo

To be shared equally amongst the three houses.

21. Thika Scheme V Plot – L. r No. 7240/2 with Langata Development Company

To be shared equally amongst the three houses

#### **BANK ACCOUNTS**

The proceeds in all the accounts listed below shall be shared equally amongst all the beneficiaries:-

5. Standard Chartered Bank

A/C No. 0120012400001

6. Kenya Commercial Bank

A/C No. 181175209

7. HFCK Savings

A/C No. 1/11889

8. National Bank of Kenya Limited

A/C No. 74049674

#### **PERSONAL INVESTMENTS**

All investments listed below to be realized and the proceeds thereof to be shared equally amongst all the beneficiaries:

8. Mukiria Farmers Co-op Society Limited

Share Certificate No. 992

**9. Kenya Commercial Bank Shares**

**A/C No. 085909**

**10. Government Treasury Bill**

**Issue No. 1057**

**11. Nkando Farmers' Co-operative Society Limited**

**Membership No. 2983**

**12. KNFU Membership No. 38 -00251618-10**

**13. Kshs. 14,400/- with Ntoringwi Scheme**

**14. Meru Central Farmers' Co-operative Society Ltd**

**Member No. 1016**

[14] The grant herein is confirmed in the above terms. No order as to costs.

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

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**F.M GIKONYO**

**JUDGE**

**In presence of**

Kurauka holding brief M/s Kiome for petitioner

Interested party- present

Kimaita for Interested party

Kimaita for Kaumbi for Charity Igoki

Judith Kananu present

Otieno for Karuma for Douglas Mwiti,

Cyrus Muthuri – present

3 administrators – present

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**F.M GIKONYO**

**JUDGE**