



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

SUCCESSION CAUSE NO. 33 OF 2011

In The Matter Of The Estate Of M'inoti M'inui (Deceased)

ALFRED MUGAMBI M'INUI.....PETITIONER

-VS-

SABELLA GAITI M'INOTI.....1ST OBJECTOR

JAPHET KINYUA.....2ND OBJECTOR

FRANKLIN MURIUNGI.....3RD OBJECTOR

CHARITY NKIROTE BUNDI.....4TH OBJECTOR

REBECCA NKATHA M'INOTI.....1ST PROTESTOR

FESTUS MBAABU M'INOTI.....2ND PROTESTOR

JOHNSON KITHINJI INOTI.....3RD PROTESTOR

MACKLINE KANGAI KAIMENYI.....4TH PROTESTOR

JUDGMENT

[1] This deceased Herein *M'inoti M'inui* died on 19th September 2012 was domiciled in Katheri Location prior to his death and as per the letter of the Nduruma Location dated 18th August 2010 he left behind the following dependents; *Sabella Gaiti Inoti (wife) Evangeline Nkuene M' Inoti (wife- deceased), Rebecca Nkatha M' Inoti (wife), Alfred Mugambi Inui, Gerishon Gituma, Charity Nkirote, Japheth Kinyua, Festus Mbaabu M' Inoti, Stanley Mwiti M' Inoti, Charity Kirigo, Mary Kinanu, Rose Kanyua Kinoti, Gladys Kathure Kinoti, Lydia Nceke Mwiti, Purity Kanini Inoti, Emily Kathambi Inoti, Johnson Kithinji Inoti, Franklin Muriungi Inoti, Paul Kaimenyi Inoti, Mary Karimi Inoti.*

[2] The petitioner cited the objectors herein on 2nd December 2011. He later filed for letters of Administration on 20th January 2011 allegedly with the consent of eleven (11) of the beneficiaries. He listed the full inventory of the assets of the deceased as; *Nyanyuki/ Marura Block 8/2177 (Nturukuma), Nyanyuki/ Marura Block 8/409 (Nturukuma), Abithuguchi/Kithiruine/507, Ntirimiti/776, Kibiricha/Kathuine/71,72.73 & 74, Kibiricha/ Kithuine/29*

[3] The objectors filed objection proceedings on 7th February 2011 claiming that the petitioner had secretly filed the petition herein and that the petitioner cannot be trusted as sole administrator. They also averred that the deceased had during his lifetime transferred the following properties; Nyanyuki/ Marura Block 8/409 (Nturukuma) to Sabilla Gaiti Inoti, Nyanyuki/ Marura Block 8/2177 (Nturukuma) to Bernard Kinyua and Sabilla Gaiti Inoti, Kibiricha/Kathuine/75 to Evangeline Nkuene Inoti.

[4] The petitioner also filed an Application dated 12th April 2011 praying for inhibitory Orders over the suit premises. He averred that he visited the lands registry only to realise that the suit premises in Nyanyuki/ Marura Block 8/409 and Nyanyuki/ Marura Block 8/2177 had been transferred to Sabella Gaiti M'Inoti. He attached the official search that showed the suit premises were transferred to the 1st Objector on 24.08.2005 that was after demise of the deceased. The Court granted the inhibitory Orders on the suit premises.

[5] On 24th June 2011 Frankline Muriungi Inoti replied to the petitioners Application dated 12th April 2011 restating the averments made in the objection proceedings but further averred that the deceased subdivided Kibiricha/Kithuine/29 to various portions that includes Kibiricha/

Kithuine/75 to Evangeline Nkuene M' Inoti. That the same applies to Abothuguchi/Kithiruine/507 which has affixed boundaries occupied by the beneficiaries. That L.r.Ntirimiti/776 was also sold by the deceased to Gerrishon Gituma M' Inoti who has since been in occupation.

[6] On 18th June 2014 the Honourable Court appointed Alfred Mugambi M'Inoti and Franklin Muriungi as joint administrators of the estate. The petitioner herein filed his proposal to the mode of distribution of 10th April 2017 which was protested to by the Protestors herein on 18th May 2017 wherein they also proposed their mode of distribution. The 2nd Administrator, Frankline Muriungi also protested to the petitioner's mode of Distribution on 10th June 2017 and aligned himself to his modes of distribution made on 2nd February 2017.

[7] All parties have filed their written submissions fortressing their modes of Distribution.

ANALYSIS AND DETERMINATION

[8] Distribution of this estate is my core business. However, I must first make a determination of the transfer of the properties in Nyanyuki/Marura Block 8/409 and Nyanyuki/ Marura Block 8/2177 to Sabellah Gaiti M'Inoti. Whereas the 1stObjector contends that the transfers were made to Sabellah Gaiti M' Inoti in the year 1988 and titles issued in the year 2005. This averment has not been justified or proved by way of tangible evidence, say, application for, and land control board consent. I hoped to see that kind of evidence which would demonstrate the transfer was done by the deceased. I am aware Sebellah is the widow of the deceased but she did not stake matrimonial property rights in this case. I wish she had done so. In the circumstances, it is proper to conclude that no evidence was adduced to show that the lands were gifted to Sabellah Gaiti M' Inoti by the deceased. It was not explained plausibly why it took such a long time i.e. from 1988 to 2005 to effect the aforesaid transfer. I find these lands are estate property.

[9] The purchase of L.r.Ntirimiti/776 by Gerrishon Gituma has also not been proved. This property is also estate property and shall revert to the deceased.

[10] I have also considered the different modes of distribution proposed by the parties herein. They provides for sons of the deceased but not all the daughters of the intestate

[11] Having stated the foregoing, I confirm the grant herein. Distribution of the estate of the deceased should be in terms of Section 40 of the Law of Succession Act since the deceased was polygamous. Accordingly, the estate shall be distributed as follows:-

ABOTHUGUCHI/KITHIRIUNE/507

To be distributed equally amongst; Gerrishon Gitoma, Japheth Kinyua, Festus Mbaabu, Stanley Mwiti, Franklin Muriungi& Jenifer Nkirote

L.R. NO. KIBIRICHA/GATHUINE/29 (SUB-DIVIDED INTO L.R.NOs 71-75)

L.r.No. Kibiricha/ Gathuine/72 0.61 Ha to Mackline Kangai

L.r. No. Kibiricha/Gathuine/73 0.61 Ha to Johnstone Kithinji

L.r.Kibiricha/Gathuine/74 0.81 Ha to Alfred Mugambi

L.r. No. Kibiricha/ Gathuine/71 to Rebecca Nkatha

L.r. No. Kibiricha/ Gathuine/75 to be shared amongst Charity Kirigo, Mary Kananu, Rose Kanyua, Lydia Ncekei, Gladys Kathure, Purity Kanani, Estate of Emily Kathambi

L.R. NO. KIBIRICHA/ NTUMBURI/240

To be distributed equally amongst Rebeccah Nkatha and Mary Karimi

L.R.NO. NTIRIMITI SETTLEMENT SCHEME/776

To be distributed equally amongst Alfred Mugambi, Gerishon Gituma, Japheth Kinyua, Festus Mbaabu, Stanley Mwiti, Johnson Kithinji, Franklin Muriungi& Estate of Peter Kaimenyi.

L.R. NO. NANYUKI/ MARURA/8/409

To be distributed equally amongst Charity Kirigo, Mary Kananu, Rose Kanyua, Lydia Ncekei, Gladys Kathure, Purity Kanani, Estate of Emily Kathambi, Jenniffer Nkirote and Mary Karimi

NYANYUKI/MARURA BLOCK 8/2177

½ share To Bernard Kinyua, balance to be sold for and proceeds used for subdivision

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

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F.M GIKONYO

JUDGE

IN PRESENCE OF

Gikunda for 2nd administrator

Karanju for petitioner

Marete for Mburugu for protestor

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F.M GIKONYO

JUDGE