



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

SUCCESSION CAUSE NO 697 OF 2013

IN THE MATTER OF THE ESTATE OF FREDRICK M'NKANATA M'MUTUNGI (DECEASED)

JULIUS KIOGORA M'NKANATAPETITIONER

JUDGMENT

1. **Fredrick M'Nkanata M'Mutungi ("the deceased")**, died on 27th March 1997. He was a polygamist and had four houses. On the 12 July, 2013 the chief of Naari location introduced the survivors of the deceased. The first house had nine children, the second house had nine children, the third house had three children and the fourth house had seven children. In this regard, the deceased had a total of thirty children.
2. On 23 December 2013, Julius Kiogora M'Nkanata petitioned for letters of administration intestate and listed **L.R. NO. Kiirua/Naari/1526, L.R. NO. Kiirua/Naari/73** and **plot No. 68, Isiolo** as the only assets of the estate. On 19th March, 2014 the grant of letters of administration intestate was issued to the petitioner.
3. By Summons dated 2nd June, 2016, the petitioner applied for the confirmation of grant. He proposed to distribute the estate in accordance with the houses. When the matter came up for confirmation on 31st October, 2018, some of the beneficiaries objected to the proposed mode of distribution while the majority of the beneficiaries did not attend. In this regard, the court directed that the matter proceeds on 26th November, 2018 when all the beneficiaries were to be present.
4. On that date, the representatives of the various houses proposed that the estate be distributed in accordance with the children instead of per houses as proposed by the petitioner. However, they did not challenge or oppose the petitioner's proposal that he be allocated **Plot No. 68, Isiolo**.
5. In this regard, the court took the parties representations and the respective places where they have been occupying. It also considered the evidence on record. The only issue for determination is **how the estate should be distributed**.
6. **Section 40 of the Law of Succession Act, Cap 160** provides that in a polygamous set up, each child of the deceased is to be considered as a unit with any surviving widow forming a separate unit. In the present case, while there are 28 children, there are 3 surviving widows. Accordingly, there are 31 units. The estate is therefore to be divided into 31 equal units.
7. I have considered that the parties were not opposed to the petitioner taking the Isiolo plot. There was no valuation report that was filed to enable the court ascertain the value of the properties. The total acreage of the remaining two properties is 27.64 acres. Since the petitioner will take the Isiolo plot, he will not be included in the distribution of the 27.64 acres. The same will be divided into 30 equal units making it 0.921 acres for each beneficiary.
8. Since the beneficiaries indicated where they have been occupying, the distribution will take that into consideration. In this regard, doing the best I can, the estate is to be distributed as follows: -

a) KIIRUA/NAARI/1526

Harriet Mwiti	-	0.921acres
Susan Kathure	-	0.921 acres
Joseph Miriti	-	0.921 acres
Martha Kajuju	-	0.921 acres
Harriet Karamuta	-	0.921 acres

Evangeline Makena - 0.921 acres
Dorcas Kaguri - 0.921 acres
Damaris Kinanu - 0.921 acres
Rael Kibobori - 0.272 acres

b) KIIRUA/RUIRI/73

Rael Kibobori - 0.649 acres
Rose Ruguru Nkanata - 0.921 acres
Lawi Murira M’Nkanata - 0.921 acres
Robert Mutuma - 0.921 acres
Jane Karwirwa - 0.921 acres
Francis Ndubi M’Nkanata - 0.921 acres
Jeremiah Mburugu - 0.921 acres
Ann Kananu - 0.921 acres
Stephen Mwiti - 0.921 acres
Agnes Mwendwa - 0.921 acres
Gladys Gauko M’Nkando - 0.921 acres
Eliud Mwenda M’nkanata - 0.921 acres
Judith M’Nkanata - 0.921 acres
Catherine Gacheri M’Nkanata - 0.921 acres
Tabitha Kathure M’Nkanata - 0.921 acres
Zachary Muriuki - 0.921 acres
Samwel Miriti - 0.921 acres
Lucy Kagwiria - 0.921 acres
Eunice Karambu - 0.921 acres
Doris Mpinda - 0.921 acres
Mary Kanorio - 0.921 acres
Joshua Murithi - 0.921 acres

c) PLOT NO. 68, ISIOLO

Julius Kiogora - whole

9. There will be no order as to costs.

DATED and **DELIVERED** at Meru this 21st day of February, 2019.

A. MABEYA

JUDGE