



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

SUCCESSION CAUSE NO. 324 of 2014

IN THE MATTER OF THE ESTATE OF M'TWIRANDU MUTWIRANDU(DECEASED)

JOSEPH MUGA.....PETITIONER

-VS-

EVANGELINE NKUENE MUNGATIA.....1ST OBJECTOR/APPLICANT

REBECCA MWARI KARIMI.....2ND OBJECTOR/APPLICANT

JUDGMENT

1. The deceased herein *M'Twirandu Mutwirandu* died on 22nd June 2010 was domiciled in Kibiricha location prior to his death and as per the letter of the Chief Kibiricha Location dated 28th December 2011 he left behind a widow, Six (6) daughters and twelve (12) sons. He also left behind the following asset; Kibiricha/ Gathuine/31.

2. The petitioner herein filed for letters of Administration on 23rd July 2014. The same was gazetted on 5th September 2014 and letters of Administration were issued to the petitioners on 23rd October 2014. He also filed Summons for Confirmation of grant on 16th June 2017 proposing to distribute the estate amongst Johnson Mwenda M'Twerandu (2 acres), Henry Mugambi M'Twirandu (2 acres), Moses Bundi M' Twirandu (2 acres), Stella Karwirwa (2 acres), and Janet Mukomeru M'Twirabdu (balance).

3. In his further supporting affidavit dated the same day he averred that the objectors were chased out by the deceased under Meru custom and it was the deceased wishes that they never set on any of the properties. That the deceased had bought them land in Naromoru where they reside to date. He attached minutes from clan elders to prove this averment. He further stated that the deceased had also made a wish that he purchases two (2) acres to be distributed to two other sons from another house which he averred he had done (At Ruirir/ Rwarera)

Objector's Claim

4. The objector filed an affidavit of protest to the summons for confirmation of grant on 24th July 2018 and averred that they are daughters of the deceased. They denied that land was bought for their mother and if that was the case the same was their mothers land. They also denied that they were at any one time chased away by their father. They sought to distribute the estate equally amongst the surviving dependents.

Distribution of the estate

5. Before I delve into the question of distribution of the estate, I note that the deceased had eighteen (18) children; six daughters and 12 sons. Two (2) of them have since passed on and there is no mention whether they left behind any surviving dependents. The petitioner has also mentioned two (2) other sons from another house but did not give details thereof. Again, he stated that the deceased bought land in Narumoru for the daughters herein. But he did not give details of the said alleged land in Narumoru. The daughters have denied its existence and there is nothing in these proceedings which helps in ascertaining the said land for the purposes of distribution.

6. There is also no indication of the interest of the 2nd House or whether they were aware of these proceedings. The letter of introduction by the chief does not give an indication of there being a second house. The petitioner did not mention or provide for the said 2nd house at the inception of these proceedings. I am surprised he has mentioned about the 2nd house only now in his affidavit dated 27th June 2016. I'm therefore inclined, at this juncture, not to consider the alleged second house as no details about them is provided.

7. Having said that, let me now consider the other issues at hand.

8. The petitioner herein relies on the allegation that the daughters of the deceased were chased away by the deceased according to Meru Customs and hence they are not entitled to the estate of the deceased. This statement is a strong and overt manifestation of patriarchal

posture. The current jurisprudence and law is that daughters are entitled to inheritance just like the sons. And there is a legion of cases on this point which I do not wish to multiply except I am content to cite the following enunciation on such discrimination in the case of **Thomas Tito Nyachawo v Judith Akinyi Ndege [2016] eKLR** that;

“.....With the foregone evidence, the issue for determination by this Court is whether the Luo Customary Laws on inheritance should be applied as craved by the Petitioner in the distribution of the only property which forms the estate of the deceased. Whereas Article 11 of the Constitution recognizes culture as 'the foundation of the nation and as the cumulative civilization of Kenyan people and nation', the framers of the Constitution who are the people of Kenya, did not anticipate that culture would form a basis for discrimination between the peoples of Kenya. The forms of culture anticipated to be promoted under the said Article 11 of the Constitution are those with positive aspects but not practices that are negative, discriminatory, oppressive or retrogressive.

11. In this cause the Petitioner holds that the Protestor, as a daughter to the deceased, is not entitled to inherit the property which comprises of the estate of the deceased on the ground that she is married. But upholding such a position will be tantamount to discrimination of the Protestor which in itself will be contrary to Article 27 of the Constitution which prohibits any form of discrimination based on race, sex, marital status or culture. Indeed Article 27(3) of the Constitution specifically provides that 'women and men have the right to equal treatment, including the right to equal opportunities in political, economic, cultural and social spheres'.

12. Section 29(a) of the Act in recognizing 'children' of the deceased as dependants does not classify those children as sons, daughters, married or unmarried. However that distinction happens to be in the Luo Customary Law on inheritance. To that extent therefore the Luo Customary Law on inheritance discriminates between the male and female children of a deceased person and as such it is a retrogressive custom which cannot supersede the Constitution and the law.....”

9. It is also peculiar to note that despite the loathed position taken by the Petitioner, he has given one of the daughters a portion of land. That overwrites on his argument.

10. The deceased was survived by one widow, sons and daughters. Section 35 of the Law of Succession Act becomes relevant. But, the tendency now is to appropriate a distinct share to the widow rather than create a life interest over the entire estate. Again, questions have been asked about the constitutionality of reducing a spouse's interest to mere life interest. It has been alluded to that the deceased was polygamous. If that be the case, section 40 of the Law of Succession would also be relevant guide. Either way, the principle of equality and equity enshrined in section 38 of the Law of Succession Act permeates throughout the law of succession regardless of the ages, gender and status of the dependants of the deceased. **See In Re Estate of John Musambayi Katumanga – (Deceased) [2014]eKLR**

11. On the basis of the law and the circumstances of this case, I agree with the averments by the objectors that the estate ought to be distributed equally amongst the surviving dependants herein.

12. In the upshot therefore, the grant herein is confirmed and I order that the estate of the deceased **land parcel number Kibiricha/Kathueni/361 measuring 9.8 Acres** shall be divided equally amongst the following;

1. **Janet Mukomeru M'Tuerandu**
2. **Joseph Mugaa M'Twerandu,**
3. **Evangeline Nkuene Mung'atia,**
4. **Joyce Gacheri Daniel,**
5. **Rebecca Mware Kirimi,**
6. **Muthuuri Daniel,**
7. **Joseph Kirai M'Twerandu,**
8. **David Muriungi Daniel,**
9. **Jacob Ndereba,**
10. **Johnson Mwenda M' Itwerandu,**
11. **Marion Mwendu Daniel,**
12. **Stella Karwira,**
13. **Henry Mugambi Mtwirandu,**
14. **Catheline Kathure,**

15. Cicilia Mworira,

16. Edith Gakii M’Twerandu and

17. Moses Bundi Daniel.

Dated signed and delivered at Meru in open court on 20th day of February, 2019.

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F. GIKONYO

JUDGE

In presence of

Basilio for Mutuma for objector

Petitioner in person – absent

All other parties present

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F. GIKONYO

JUDGE