



**REPUBLIC OF KENYA**

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

**SUCCESSION CAUSE NO. 10 OF 2018**

**IN THE MATTER OF THE ESTATE OF STEPHEN KIRIMI M'AMANJA alias S. KIRIMI M'AMANJA (DECEASED)**

**JOHN MARANGU STEPHEN.....APPLICANT/OBJECTOR**

**VERSUS**

**DANIEL KABURU STEPHEN.....PETITIONER/RESPONDENT**

**J U D G M E N T**

1. **STEPHEN KIRIMI M'AMANJA alias S. KIRIMI M'AMANJA** ("the deceased") died on 13<sup>th</sup> August, 2008. He was survived by his six children namely: *Paul Kinyua Stephen, Elias Kimathi M'Amanja, Daniel Kaburu Stephen, Julius Nkamani, John Marangu and Esther Ruguru.*

2. The petitioner petitioned for grant of letters of administration intestate which was issued to him on 28<sup>th</sup> December 2011 and confirmed on 18<sup>th</sup> December 2012 in the Magistrate's court at Chuka. The matter was thereafter transferred to this court upon application by **John Marangu Stephen** ("the objector").

3. By consent of the parties, the grant was revoked by this court on 4<sup>th</sup> December 2018 and the parties agreed to file their respective affidavits on the mode of distribution. This they did and they required the court to examine and consider them and make its decision on distribution.

4. In his affidavit sworn on 5<sup>th</sup> March, 2019, the petitioner proposed that the estate be distributed as follows: -

**a) L. R. No. Nkuene/Taita/2056**

Elias Kimathi M'Amanja

**b) L. R No. Nkuene/Taita/398/160**

Julius Nkamani

**c) L.R. No. Ngobit Supuko Block 5/132 South Imenti**

Daniel Kaburu Stephen

**d) L. R. No. Nkuene/Taita/2060**

Julius Nkamani & Esther Ruguru (jointly)

**e) L. R. No. Nkuene/Kithangari/183**

Esther Ruguru, John Marangu Stephen, Paul Kinyua Stephen, Daniel Kaburu Stephen & Julius Nkamani Stephen (Equal Shares)

**f) Ncema Building House Shares**

Esther Ruguru

**g) Co-operative Bank Shares**

To be sold and proceeds to be shared equally

**h) Catholic Meru Association Small House Shares**

Esther Ruguru

5. On his part, the objector proposed in his affidavit sworn on 27<sup>th</sup> February, 2019 that the estate be distributed equally amongst all the six beneficiaries with the exception of **Plot No. Nkuene/Taita 398/160**, Ncema Building House shares, Co-operative Bank shares and Catholic Men Association Small House shares which should be sold and the proceeds therefrom be shared equally.

6. This being a family court, its jurisdiction is to ascertain the beneficiaries of the deceased, ensure collection and preservation of the estate property and thereafter distribute the same to the beneficiaries. In *Re Estate of Alice Mumbua Mutua (Deceased) [2017] eKLR Musyoka J. held:-*

*“The Law of Succession Act, and the Rules made thereunder, are designed in such a way that they confer jurisdiction to the probate court with respect to determining the assets of the deceased, the survivors of the deceased and the persons with beneficial interest, and finally distribution of the assets amongst the survivors and the persons beneficially interested. The function of the probate court in the circumstances would be to facilitate collection and preservation of the estate, identification of survivors and beneficiaries, and distribution of the assets.*”

7. The parties filed their respective affidavits on the mode of distribution but none of them gave any explanation to support his respective contentions. However, the petitioner filed witness statements of **Esther Ruguru, Damiano Kinoti M’Arimu, Francis Muriuki Muthaura** and his own. Since those were mere statements, they cannot be taken to be evidence. If they were affidavit evidence as the court had directed, the court would have considered the averments thereon in arriving at its decision. They however remain what they are, mere statements of no probative value whatsoever.

8. It is trite law that when a deceased has died intestate and survived by his children, his/her estate ought to be divided equally amongst all the children as is provided for under **Section 38 of the Law of Succession Act (“the Act”)**.

9. There is no dispute of who the beneficiaries of the deceased are. As regards the assets of the deceased, they are known and agreed to by the parties. One thing that is clear from the proposal by the petitioner is that it is not fair. If adopted, the objector and **Paul Kinyua Stephen** will be most disadvantaged. This is so because, the two are made to share **Nkuene/Kithunguri/183** equally with the rest of the beneficiaries who would have already had other properties distributed to them.

10. One other thing which has disturbed this court is that, the petitioner as the administrator of the estate did not bother to file the valuations of the respective properties which would have acted as a guide to this court. Further, there is no evidence as to the size of **Nkuene/Kithunguri/183**. The total acreage for the other properties is 3.675 ha. It would be next to impossible for the court to ascertain what will constitute equality in distribution in terms of **Section 38** of the Act the absence of known acreages.

11. Accordingly, the order that commends itself to me is that the estate be distributed equally amongst the beneficiaries.

12. In this regard, the court makes the following orders: -

a) a grant of letters of administration intestate is hereby issued to Daniel Kaburu Stephen.

b) the estate of the deceased is hereby distributed as follows:-

**L.R. NO. NGOBIT SUPUKO BLOCK 5/132 SOUTH IMENTI**

Paul Kinyua Stephen

Elias Kimathi M’Amanja

Daniel Kaburu Stephen            To share equally

Julius Nkamani

John Marangu Stephen

Esther Ruguru

**PLOT NO. NKUENE/TAITA/398/160**

Due to its insignificant size, the property be sold and the proceeds be distributed equally amongst the beneficiaries equally.

**NKUENE/KITHUNGURI/183**

Paul Kinyua Stephen

Elias Kimathi M'Amanja

Daniel Kaburu Stephen        To share equally

Julius Nkamani

John Marangu Stephen

Esther Ruguru

**NCEMA BUILDING HOUSE SHARES**

Paul Kinyua Stephen

Elias Kimathi M'amanja

Daniel Kaburu Stephen        To share equally

Julius Nkamani

John Marangu Stephen

Esther Ruguru

**CO-OPERATIVE BANK SHARES**

Paul Kinyua Stephen

Elias Kimathi M'amanja

Daniel Kaburu Stephen        To share equally

Julius Nkamani

John Marangu Stephen

Esther Ruguru

**CATHOLIC MEN ASSOCIATION SMALL HOUSE SHARES**

Paul Kinyua Stephen

Elias Kimathi M'Amanja

Daniel Kaburu Stephen        To share equally

Julius Nkamani

John Marangu Stephen

Esther Ruguru

**12. This being a family matter, I will make no order as to costs.**

**DATED and DELIVERED at Meru this 25<sup>th</sup> day of April, 2019.**

**A. MABEYA**

**JUDGE**