



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NYERI

HIGH COURT SUCCESSION CAUSE NO.261 OF 1994

IN THE MATTER OF ESTATE OF PETER GITHINJI MURIITHI

alias GITHINJI MURIITHI (DECEASED)

JOSEPH NGUNJIRI MURIITHI.....1ST PETITIONER/APPLICANT

JOHN KAROKI MURIITHI.....2ND PETITIONER/APPLICANT

BETWEEN

SAMUEL MURIITHI GITHINJI.....1ST OBJECTOR/PROTESTOR

SARAH MUMBI GITHINJI.....2ND OBJECTOR/PROTESTOR

RULING

The cause herein relates to the estate of Peter Githinji Muriithi who is said to have died on 29th March 1968. From the file the deceased was registered proprietor of parcel No.Ruguru/Kiamariga/606 measuring 4.3 acres. The same was registered on 26th February 1959 to Githinji s/o Muriithi.

The deceased Peter Githinji Muriithi was the son of Mary Wangari Muriithi. He had two siblings, Joseph Ngunjiri Muriithi and John Karoki Muriithi the petitioners herein. He was also married to Sarah Mumbi Githinji and they had children the Objector herein Samuel Muriithi Githinji, Paul Murage Githinji, Thomas Ngunjiri Githinji and Elizabeth Wangari Githinji

After the initial processes of citations, objections, cross petitions on 18th July 2014 a grant of letters of administration intestate was issued to the two brothers and his widow Sarah Mumbi Githinji. On 24th July 2015 the two brothers' filed summons for confirmation of grant in which they proposed that the land Ruguru/Kiamariga/606 be shared equally among the three of them. This provoked the affidavit of protest filed on 7th October 2015 by Samuel Muriithi Githinji- a son to the deceased and his mother Sarah Mumbi Githinji, the deceased's widow.

He deponed that the estate was his father's. That his father was survived by his mother, himself and his siblings- Paul Murage Githinji, Thomas Ngunjiri Githinji and Elizabeth Wangari Githinji. He proposed that the estate be distributed as follows:-

Ruguru/Kiamariga/606

1. SARAH MUMBI GITHINJI - 0.4 Acres WIFE
2. SAMUEL MURIITHI GITHINJI - 0.9 Acres SON
3. PAUL MURAGE GITHINJI - 0.4 Acres SON
4. THOMAS NGUNJIRI GITHINJI - 0.4 Acres SON
5. ELIZABETH WANGARI GITHINJI - 0.4 Acres DAUGHTER
6. JOSEPH NGUNJIRI MURIITHI - 0.9 Acres BROTHER

7. JOHN KAROKI MURIITHI - 0.9 Acres BROTHER

In response to the affidavit of protest the applicant petitioners swore an affidavit filed on 17th November 2015 to the effect that they were beneficiaries of their brother's estate because when he was registered in 1959 during demarcation he was registered as a trustee for their mother's house. That further in 1962, the clan divided the land into three equal portions- one for deceased's widow, one for each of them. They opposed the protest by Samuel Muriithi on the ground that he could only claim a portion from his mother and not directly from his father's share.

In a further affidavit in support of the affidavit of protest the 1st protestor deponed that it was true that his grandfather had 2 parcels of land- Ruguru/Karuthi/99 which was shared among:-

- Defura Wanjuku Muriithi
- Ndiritu Muriithi
- Peter Githinji Muriithi – his father

And Ruguru/Kiamariga/606 which was shared among his father and his father's brothers the applicants.

That his father planted coffee on No.99 in 1964 and made him his nominee. That there was a succession cause for No.99 in 1965 at Karatina Court but his father died before the matter was finalized. That his two grandmothers later in 1990 filed another cause 106/1990 over his grandfather's estate. That cause was finalized and the land shared into 3 equal shares in 1994. Subsequently his uncles filed this caused in 1994 without informing his mother/himself. That out of parcel no No.99 came three parcels, 1519, 1520 and 1521. That no.1520 was meant to be for his father but his uncles and his grandmother sold it and shared the proceeds to the exclusion of his father's family and it was only fair that his family inherit the larger share in their father's land No.606 taking into consideration what the uncles had inherited from No.99.

He was able to demonstrate that the land Ruguru/Karuthi/99 belonged to his grandfather and was partitioned into three 1520, 1521, 1519 vide the District Commissioner's letter of 24th November 1994. The District Commissioner states:-

The Provincial Commissioner,

Central Province,

Private Bag,

NYERI. (Att.Origa Ogutu)

RE: RUGURU/KARUTHI/1520, 1521 AND 1519 FORMERLY NO.99

Your letter No.LND.2/17/XXVI/163 dated 28th September, 1994 refers.

A report from the chairman Divisional Land Control Board Mathira stated the following: -

1. That Samuel Muriithi did not produce any document to the members of the board to indicate that a case was pending in court.
2. Plot No.1520 was approved for transfer to Mr.Nduhiu Githungu on 24th June, 1994 by the members because they did not see any reason to stop such transaction because:-
 - i) That plot belonged to Mary Wangari Muriithi who got it from her sister who did not have a child and as such decided to give her sister as a gift.
 - ii) Mary Wangari Muriithi was married to the late Muriithi who was the grandfather to the complainant. Mr. Muriithi had two parcels Nos.1519 and 1521 which can be claimed by his heirs, who in this case should have been the parents of the complainant.
 - iii) The sons of Mary Wangari Muriithi allowed their mother to sell that piece of land No.1520 which measures about one (1) acre to Mr. N. Nduhiu Githungu.
 - iv) Even if there was a case pending in court- (which was not presented to the Board) the complainant has almost nil chances of winning any battle, because he is just a grandson of Mrs. Mary Wangari Muriithi. The complainant should claim for his rights from his parents and not his grandfather.

(W.O. WANYANGA)

FOR: DISTRICT COMMISSONER

NYERI.

In the letter it is evident that the parcel No. 99 Ruguru /Karuthi belonged to the deceased's father. Its subdivision produced the three parcels and that the petitioners/ applicants and their mother sold No.1520. By then the father and husband to the objectors respectively was deceased. His house was not involved although it was entitled to the estate, as acknowledged by the two petitioners/applicants in filing this cause. But neither the 2nd protester nor her children were involved. The 1st protester's efforts to file a caution failed because he could not produce proof of the existence of a court case, and the fact that the DC made a narrow interpretation of his claim: that he was laying a claim on his grandfather's estate yet it is evident he was after his father's entitlement in the estate.

Be that as it may the District Commissioner acknowledged that the parents of the 1st protester were entitled to a share of 1521 and 1519 but they never got it .The respondents herein were aware of that as they are the ones who gave consent to their mother to sell the No.1520. The applicant acknowledges that his uncles are entitled to a part of his father's estate so as to balance everyone's entitlement.

During the hearing of the protest and the summons for confirmation of grant the protester reiterated the evidence in his affidavit and documents annexed.

The applicant/petitioners denied any knowledge of the Ruguru/Karuthi/99 land. They argued that No.606 belonged to their mother and their brother the deceased herein was registered as a trustee for the whole family and that it was their mother who put the deceased's name on that parcel of land to hold in the trust for himself and for the rest of the family. However, that testimony was not supported by any evidence. The protesters demonstrated that the land belonged to the father and husband respectively having been registered in his name.

The mother to the petitioners/applicant's and the deceased herein in her life time transferred some of the land in her name and sold it. If this land was intended as testified by the petitioners /applicants then their mother had every opportunity in her life time to distribute the land to the three sons. That did not happen because the only land that was registered in in her husband's name was Ruguru/Kiamariga/99, which land was dealt with through succession cause 106 of 1990, and out of which the deceased herein was not given anything.

Rule 40(6) of the P&A rules provides:

Any person wishing to object to the proposed confirmation of a grant shall file in the cause in duplicate at the principal registry an affidavit of protest in Form 10 against such confirmation stating the grounds of his objection

The protesters herein protested on the grounds that they were the rightful persons to be issued with letters of administration of the deceased estate as widow and son, and also to inform the court of the rightful heirs to that estate.

S. 66 of the Law of Succession Act provides guidelines to the court as to the preference to be given to certain persons to administer where deceased died intestate. The deceased herein died intestate. He did not leave a will appointing the two brothers as the administrators of his estate and they produced no evidence to support of the alleged trust, and if indeed one existed, this was the wrong forum for the matter.

Having found no evidence that the land was registered in the name of the deceased in trust for anyone, I am guided by section 66 of the Laws of Succession Act which states:

When a deceased has died intestate, the court shall, save as otherwise expressly provided, have a final discretion as to the person or persons to whom a grant of letters of administration shall, in the best interests of all concerned, be made, but shall, without prejudice to that discretion, accept as a general guide the following order of preference—

(a) surviving spouse or spouses, with or without association of other

beneficiaries;

(b) other beneficiaries entitled on intestacy, with priority according to their respective beneficial interests as provided by Part V;

(c) the Public Trustee; and

(d) creditors:

Provided that, where there is partial intestacy, letters of administration in respect of the intestate estate shall be granted to any executor or executors who prove the will.

The deceased herein had a surviving spouse, the second protester who is in priority to the petitioner applicants herein. They filed the cause without her involvement and declared for themselves an equal portion of the deceased estate contrary to s. 35 of the LOSA, where the estate of an intestate who is survived by his spouse and children goes to his wife and children.

In this case the protest was filed by the widow and her son. They were in agreement with the rest of the family on the mode of distribution of the deceased's estate and also took into consideration that the brother's in law were entitled to a portion. The court did not see any reason to interfere with that agreement on the mode of distribution.

Having carefully considered all the evidence before me, I find that the protest is merited. It is allowed.

1. The grant be confirmed in terms of the protest and **Ruguru/Kiamariga/606** be distributed as follows:

- a. SARAH MUMBI GITHINJI - 0.4 Acres WIDOW
- b. SAMUEL MURIITHI GITHINJI - 0.9 Acres SON
- c. PAUL MURAGE GITHINJI - 0.4 Acres SON
- d. THOMAS NGUNJIRI GITHINJI - 0.4 Acres SON
- e. ELIZABETH WANGARI GITHINJI - 0.4AcresDAUGHTER
- f. JOSEPH NGUNJIRI MURIITHI - 0.9 Acres BROTHER
- g. JOHN KAROKI MURIITHI - 0.9 Acres BROTHER

2. There are no orders as to costs.

Delivered, dated and signed at Nyeri this 23rd Day of May 2019.

Mumbua T Matheka

Judge

In the presence of:

Court Assistant: Juliet

SARAH MUMBI GITHINJI

SAMUEL MURIITHI GITHINJI

JOSEPH NGUNJIRI MURIITHI

JOHN KAROKI MURIITHI

Judge