



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MAKUENI

HC. P&A NO. 133 OF 2017

FORMERLY MACHAKOS HC. P&A NO. 764 OF 2010

ESTATE OF JOEL KINGUU NGWILI (DECEASED)

TITUS MUTUKU KINGUU

JOSHUA MUSILI KINGUU PETITIONERS/ADMINISTRATORS

RULING

1. This succession cause is in respect to the estate of **Joel Kinguu Ngwili** of Kalama location who died on 7th April, 1995. The petition was filed on 29th October 2010. The deceased was married to two wives namely:

- **1st house - Elizabeth Mei Kinguu**
- **2nd house - Naomi Muti Kinguu**

2. The children from the 1st house are:

- i. Late Peter Musyimi Kinguu – survived by wife (Teresia Ndindi Musyimi)**
- ii. Titus Mutuku Kinguu**
- iii. Julius Kinguu**

3. The 2nd house had only one son namely: **Joshua Musili Kinguu**. The deceased did not have any daughters and he did not leave any will, so he died intestate.

4. The initial grant of letters of administration intestate was issued to **Titus Mutuku Kinguu**.

5. On 13th day of June 2019, grant of letters of administration intestate were issued jointly to:

- i. Titus Mutuku Kinguu**
- ii. Joshua Musili Kinguu** by consent of the beneficiaries.

6. The two administrators were not able to agree on the mode of distribution of the estate. The deceased's estate comprises of only one property namely:

i. KALAWA/KATHULUMBI/297 measuring 63.0 acres.

7. **Titus Mutuku Kinguu** the 1st administrator proposes that the estate be distributed equally among the four sons of the deceased. On the other hand, **Joshua Musili Kinguu** the 2nd administrator proposes that the estate be distributed equally between the two houses.

8. The court invited the administrators to a hearing. They elected to testify without calling any witnesses. **Titus M. Kinguu** testified that when their father died in 1995, he had shown the sons where to settle and farm. He had also made provision for grazing fields.

9. That there were no problems when the father was alive. It was after their father's death that the 2nd house started bringing problems with regard to the shamba. Titus called him for a meeting but he refused to come.

10. Besides, the shares in the estate Titus stated that him and siblings had spent a total of Kshs.60,000/= on matters in respect of this estate and they wanted Joshua the 2nd administrator to refund this money to them.

11. **Joshua Musili Kinguu** is the only son of the deceased from the second house. He acknowledges that the estate comprises of only one asset (*land*). His proposal is for the land to be subdivided into two equal portions according to the two houses of the deceased.

12. According to him, no child owns land and so only inherits it from both parents. In cross examination, he confirmed he has children and will distribute land to them in equal shares.

13. Both administrators have stated what they think is the best way to distribute the deceased's estate. It is not disputed that:

- (i) The deceased died intestate i.e. not having written a will.
- (ii) The deceased's estate is made up of only one property i.e. Land Kalawa/Kathulumbi/297.
- (iii) The deceased had two wives
- (iv) He was survived by four (4) sons but one Peter Musyimi Kinguu died later.

The Law

14. The deceased having been polygamous and having died intestate his estate is governed by Section 40 (1) of the Law of Succession Act which provides as follows:

“Where an intestate has married more than once under any system of law permitting polygamy, his personal and household effects and the residue of the net intestate estate shall, in the first instance, be divided among the houses according to the number of children in each house, but also adding any wife surviving him as an additional unit to the number of children.”

15. The law therefore provides for the number of houses to be considered according to the children in each house. Any surviving widow is considered as an additional unit in the estate. In this case there is no surviving widow. The following are therefore the units:

- **1st house – 3 units**
- **2nd house - 1 unit.**
- **Total – 4 units.**

The land will therefore be shared out equally among these four units.

16. Are there any liabilities? Titus Kinguu told the court that expenses had been incurred in respect of this succession cause. The same should be paid from the estate and not by any single individual.

17. The above being the position, I hereby confirm the grant issued to **TITUS MUTUKU KINGUU** and **JOSHUA MUSILI KINGUU** in the following terms:

i) 0.5(1/2) acre from Kalawa/Kathulumbi/297 to be sold to defray the costs incurred in this succession cause. Any balance to be shared out between the four (4) beneficiaries.

ii) The remaining 62.05 acres in Kalawa/Kathulumbi/297 to be shared out in **equal portions among** the following beneficiaries:

(i) Teresia Ndindi Musyimi wife of the **late Peter Musyimi Kinguu.**

(ii) Titus Mutuku Kinguu

(iii) Julius Kinguu

(iv) Joshua Musili Kinguu

While sharing out the land, due consideration should be given to where the parties have currently settled.

iii) Costs to be paid from the estate as already ordered above.

Orders accordingly.

DELIVERED, SIGNED & DATED THIS 7TH DAY OF AUGUST 2019, IN OPEN COURT AT MAKUENI.

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H. I. ONG'UDI

JUDGE