



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

SUCCESSION CAUSE NO. 584 OF 2014

IN THE MATTER OF THE ESTATE OF MATHAYO MUTIGA (DECEASED)

ISAACK MWIREBUA M'MUTIGA.....1<sup>ST</sup> PETITIONER

ANN KAJUJU MATHEWS.....2<sup>ND</sup> PETITIONER

**RULING**

**1. MATHAYO MUTIGA** (“the deceased”) to whom this Succession Cause relates is said to have died sometime in 1967. According to the petitioners who petitioned for the grant of letters of administration they stated that the survived by seven (7) children namely:-

- a. **Isaac M’Mwirebua M’Mutiga** (son),
- b. **Jacob Iringo** (son -deceased),
- c. **Nahason Kaburu** (Son),
- d. **Zakaria Kirema** (Son -deceased),
- e. **Ann Kajuju Mathews** (Daughter),
- f. **Charles Mutugwa** (Son) and
- f. **Jane Nthama Koome** (Daughter).

2. His asset was listed as land parcel No. NYAKI/MULANTHANKARI/340.

3. On 18<sup>th</sup> January 2015 the petitioners were issued with grant of letters of administration intestate. Through their application dated 30<sup>th</sup> October 2018 the petitioners sought to have the grant confirmed with the following proposed mode of distribution:

**NYAKI/MULATHANKARI/340** be distributed equally amongst

- a. Nahason Kaburu
- b. Ann Kajuju Mathews
- c. Monica Njiru & Amina Mukongari – Joint registration
- d. Charles Mutugwa
- e. Isaack M’Mwirebua M’Mutiga & Jane Nthama Koome – Joint registration

4. A protest was raised by Samson Mutuma and Gerald Kirema grandchildren of the deceased as they are sons of Zakaria Kirema. They proposed that the estate be distributed as follows:

**a. Nyaki/ Mulathankari/1950** - Isaac Mwirebua from the Green Card produced herein this parcel of land was registered in the name of Isaac M'Mwirebua M'Mutiga on 6<sup>th</sup> December 1999. It is therefore, not in the name of the deceased and cannot fall for distribution and there is nothing to show that the said Isaac M'Mwirebua got it from the deceased person.

**b. Nyaki/Mulathankari/310** - Jacob M'Iringo. This parcel of land is shown in the greencard as registered in the name of Muriungi S Thurunira alias Muriungi Solomon Thurunira. He was registered on 7<sup>th</sup> August 1986 and Land Certificate issued. The same does not also fall for distribution.

**c. Nyaki/Mulathankari/340 measuring 0.4 Ha** is the only asset registered in the name of Mathayo Mutiga the deceased herein. It is the only asset that falls for distribution to the rightful beneficiaries of the estate of the deceased. The protesters have proposed that it be subdivided as follows:

- i. Children of late Zakaria Nthama - 1.100 Acre
- ii. Anne Kajuju/Jane Nthama - 0.125 Acre
- iii. Nahason Kaburu - 0.650 Acre
- iv. Charles Mutugwa - 0.125 Acre

5. In the chief's letter dated 23<sup>rd</sup> July 2019 the chief explained that the deceased had three land parcels which he shared amongst his sons as follows:

- 1. Land at Kaaga (13 Acres)** - Given to Isaack Mwirebua and Nahason Kaburu
- 2. Land at Mulathankari No. 310 (3/4 Acres)** - Given to Jacob Iringo
- 3. Mulathankari No. 340** – given to Zakaria Kirema.

He went on to explain that the family informed him that the 1<sup>st</sup> petitioner sold almost all the land he was given including Nahason Kaburu's share and is only left with a small piece **Nyaki/Mulathankari/1950** which he has refused to give Nahason. They also informed him that at the time of filing this cause he did not inform the family. Furthermore, his office does not know whether he filed the succession cause as he had not written a letter relating to the deceased's estate.

6. Isaac Mwirebua M'Mutiga opposed the protest through his replying affidavit sworn on 23<sup>rd</sup> September 2019. He deponed that the protestors have influenced the area chief who declined to write him a letter to enable the facilitation of this petition, which is a matter he brought to the attention of the court. That the petitioners were not involved in the alleged family meeting which was attended by strangers. He declared that the only property the deceased left was **L. R NYAKI/MULATHANKARI/340**. That he left out his brother Jacob Iringo from the proposed mode of distribution because he was provided for by the deceased with **L. R. NYAKI/MULANTHANKARI/310**. But the others were not provided for but as for the protestors they are entitled to what their father would have been entitled to.

7. This matter was canvassed by way of written submissions. The petitioner submitted that the court confirm the grant as per the petitioners mode of distribution.

8. The only dispute for determination is ***whether the protest has merit and how the estate of the deceased is to be distributed.***

9. The Protesters claimed that the petitioner already benefited inter vivos when land No. NYAKI/MULANTHANKARI/1950 was given to him by the deceased. The Green Card shows that he was registered on 6<sup>th</sup> December 1999 whereas the deceased died in 1967. There is no explanation how the deceased could have bequeathed the petitioner with land in 1999 when he died in 1967. This court therefore is of the view that the only asset forming the estate of the deceased i.e LR NYAKI/MULANTHAKARI/340 should be distributed equally to:-

- a. The Late Zakary Kirema – (Monica Njiru & Amina Mukongari-wives of the deceased to hold his share in trust for themselves and for the children of the deceased in equal shares.
- b. Isaac M'Mwirebua
- c. Nahashon Kaburu
- d. Ann Kajuju Mathews
- e. Charles Mutugwa
- f. Jane Nthama Koome.
- j. Each Party will bear their own costs.

**HON A.ONG'INJO**

**JUDGE**

**RULING DELIVERED, DATED AND SIGNED IN COURT ON 24<sup>TH</sup> OCTOBER 2019.**

**In the presence of:**

CA:- Kinoti

Petitioner:- Muthamia for Petitioner

Abubakar Advocate holding brief for Mr Munene Advocate for objectors.

**Mr Abubakar Advocate**

**We pray to be supplied with copy of ruling.**

**Order: Copying charges to be paid for supply of copy of ruling.**

**HON. A.ONG'INJO**

**JUDGE**