



**REPUBLIC OF KENYA**

**IN THE HIGH COURT KENYA AT MERU**

**SUCCESSION CAUSE NO. 334 OF 2014**

**IN THE MATTER OF THE ESTATE OF THE LATE ITHABU KIRINGO - DECEASED**

**JERUSHA MWOIMEA M'ETHABU .....PETITIONER**

**VS**

**ANDRIANO MUTUMA.....1<sup>ST</sup> PROTESTER**

**SILAS MUNGATHIA.....2<sup>ND</sup> PROTESTER**

**JUDGEMENT**

Jerusha Mwoimea M'ethabu obtained grant of Letters of Administration to the estate of Ithabu Kiringo on 23<sup>rd</sup> day of May 2013 in Maua Chief Magistrates Court Succession Cause No. 3 of 2013 and by an application dated 28<sup>th</sup> February 2014 sought for confirmation of the said grant which consent was given by Vigilus Ntoitha M'Ethabu only. Andriano Mutuma and Silas Mungathia didn't give consent to confirmation and mode of Distribution. When on 15.4.2014 parties appeared in court and didn't agree on mode of distribution, the magistrate on 20<sup>th</sup> May 2014 referred the matter to the High court for hearing and determination for reason the value of the estate exceeded the jurisdiction of the court.

An order transferring the cause to the High court at Meru was granted on 25.6.2014 in Misc. Appl. No. 171 of 2014.

The Petitioner again filed application for confirmation of grant made to her at Maua court and in her affidavit proposed mode of distribution. Andriano Mutuma and Silas Mungathia filed objection to mode of Distribution on 18.2.2016 dated 15.2.2016.

They did propose on 13.9.2016 that L.R. No Ithima/Ntunene/272 adjudication section which forms the entire estate be distributed equally among the sons at 2.16 acres each and the Mother to get 0.20 acres.

In their mode of Distribution dated 18.4.2017 and filed on 24.4.2017 they have changed and said that their mother should have life interest on 0.44 acres and upon her demise the said portion to be distributed equally among the sons.

That the sons to get 2.08 acres each. They said their mothers mode of distribution is not equitable and there is no reason Virigilus Ntoitha should get 3 acres where as the other 2 brothers are getting 1.5 acres each.

They also objected to Joshua Mungambi M'Mauta being given any shares from the estate as he is a stranger and if any beneficiary should land to him they should give him their shares.

The objectors counsel filed submission dated 28<sup>th</sup> July 2017. The Petitioners counsel said they were relying on petitioners affidavit in support of the application for confirmation.

This court finds that the letter from office of Assistant Chief Ntunene Sublocation identifies only Jerusha Mwoimea, Andriano Mutuma, Silas Mungatia and Vigilus M'Itha as beneficiaries to the estate and therefore Joshua Mugambi M'Mauta is a stranger in this estate and this court can't make distribution of the estate to him.

It has not been explained why the Petitioner included him as one to benefit in the affidavit which his name is not in the initial list given by the Assistant Chief.

Regarding the manner of distribution neither the Petitioner nor the objectors have explained criteria used to arrive at proposed mode of distribution by them.

I do find that the law treats everyone equally and therefore the estate will be distributed equally between the widow of the deceased and the 3 sons of the deceased. That means that each get  $\frac{1}{4}$  of the estate. Each party will bear own costs. Certificate of confirmation to issue to that effect.

**RULING SIGNED, DELIVERED AND DATED 17TH DAY OF JANUARY 2018.**

**HON. A.ONG'INJO**

**JUDGE**

In the presence of:

M/S Nelima Advocate holding brief for Nyenyire Advocate for Petitioner

Mr Ondiek Advocate for Objector – N/A

**HON. A.ONG'INJO**

**JUDGE**