



**REPUBLIC OF KENYA**

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

**SUCCESSION CAUSE NO. 633 OF 2014**

**IN THE MATTER OF THE ESTATE OF ISIDORO M'MUTHAMIA**

**ALIAS SIDOLO MUTHAMIA RIMBERIA - DECEASED**

**DAVID MUTHAMIA NTETO.....PETITIONER**

**RULING**

The Deceased Isidoro M'Muthamia died on 21<sup>st</sup> June 1988 intestate as per certificate of Death dated 3<sup>rd</sup> December 1990 and was survived by dependants, 1<sup>st</sup> wife having died, 9 daughters and 6 sons as shown in the letter dated 30<sup>th</sup> July 2014 written by Chief Gaitu East Location.

The deceased estate was made up of parcel of land number Abothuguchi/Gaitu/662 measuring 6.73 Ha David Muthamia Nteto petitioned for letters of Administration intestate to the estate of the deceased and the Grant was made to him on 2<sup>nd</sup> March 2015.

Upon expiry of the statutory 6 months the Administrator applied for confirmation of grant and the beneficiaries as listed in consent to confirmation dated 29<sup>th</sup> April 2016 and consent to Mode of Distribution dated 29<sup>th</sup> April 2016 signed giving consent.

Out of the 16 surviving dependants (2<sup>nd</sup> wife) and beneficiaries the supporting affidavit at paragraph 5 has distributed the estate 2 plots No. 14 – Mitunguu and No. 6A – Giatune to the surviving widow Joanina Nteto and L.R. No. Abothuguchi/Gaitu/662 of

- Stanley Muthuku – 2 acres
- David Muthamia Nteto – 2.5 acres
- Japhet N. Muthamia – 2.5 acres
- Joakim Kanyaki – 2.5 acres
- Lawrence Mukaraia Muthamia – 2.5 acres
- Jackson Kauabia – 2.5 acres
- Mary Gakii – 0.5 acres
- Petithia Mukiri – 1.0 acres

No share has been given to Mary Gakii Samson Millamia Rumano, Elizabeth Genaro, Marieta Samson, Tabitha Joseph Pasquarina Lawrence and Charity Mungiria all daughters of the deceased and there is no explanation in the affidavit in support of the confirmation and distribution as to why they are left out and they have not filled a form to say they are not interested in the estate.

On 16<sup>th</sup> November 2017 Mary Gakii, Elizabeth and Tabitha Joseph appended their signatures on the court record confirming they were agreeable to the mode of distribution proposed by the Administrator. That leaves us with 4 daughters who are not provided for and who have not denounced their entitlements to the estate.

In the court file is also an agreement for sale of land showing that L.R. Nkuene/Mitunguee/16 A which is shown in affidavit as one of the 2 plots given to the deceased persons surviving widow has been sold by the Administrator at a purchase price of Kshs 1,000,000/=

This purported sale is void ab initio as the Administrator has no authority to sell real property belonging to an estate before grant of Letters of Administration is confirmed. The duties of an administrator are not meant to confer personal benefits but to preserve the estate for distribution to the beneficiaries.

Under S.35(5) of the Law of Succession Act it would appear that where the deceased is survived by children the division of the property among the children should be equal and that was the holding in the Matter of the Estate of Wanjihia Njuguna (Deceased) – Nairobi H.C. Succession Cause No. 533 of 2002.

In the matter of the Estate of Kinyukui Karanja (Deceased) save that as held by Omolo J.A. in Rono vs Rono and Another (2005) IEA 363 it would be unjust to distribute the estate in equal portions particularly in the case of a young child who is still to be maintained, educated and generally seen through life. It therefore follows that there being no minor child surviving the deceased the deceased children should receive equal shares of the estate in the circumstances.

This court will therefore make an order that the proposed distribution to other beneficiaries to be reduced/discounted to enable Millamia Rumano, Marieta Samson, Mary Mureithi.

Pasquerina Lawrence and Charity Mung'ira are bequeathed a portion of their father's estate.

1. Petithia will get 1 acre and give up one acre to be shared between;
2. Millamia Romano and
3. Marietta Samson in equal shares i.e ½ acre each.
4. David Muthamia will remain with 2 acres.
5. ½ acre from David Muthamia to go to Mary Murithi, because it appears he has a life interest in L.R. No. Nkuene/Mitunguu/16 A which accordingly to his proposal should go to the deceased surviving widow.
6. Joanina Nteto, should also benefit from Giatune Plot No. 6 A.

Stanley Muthuku, Joakim Kanyaki, Lawrence Mukaria and Jackson Kaumbia to donate portions of their shares to enable charity Mungira to get ½ an acre out of L.R. No. Abothuguchi/Gaitu/662.

Costs of application for confirmation to be borne by each party as this is a cause affecting members of same family.

Orders accordingly.

**HON. A.ONG'INJO**

**JUDGE**

**RULING, DELIVERED, DATED AND SIGNED IN COURT IN 28<sup>TH</sup> FEBRUARY 2018.**

**HON. A.ONG'INJO**

**JUDGE**