



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIVASHA
SUCCESSION CAUSE NO. 7 OF 2015

IN THE MATTER OF THE ESTATE OF CHOMBA RUTERE (DECEASED)

(Original Succession Cause No. 66 of 2013 of the Senior Resident Magistrate's Court at Engineer)

BONFAS MURIGI RUTERE.....1ST ADMINISTRATOR
JULIUS KAMANDE CHOMBA.....2ND ADMINISTRATOR
TABITHA MUTHONI CHOMBA.....3RD ADMINISTRATOR

RULING

1. The Summons for Confirmation of grant filed on 3rd August, 2017 was pursuant to this court's order in the ruling delivered on 5th November, 2015. The court had revoked the grant earlier confirmed and ordered for a new grant in the names of the administrators all who are members of the immediate family of the deceased.
2. The parties have filed affidavits proposing their preferred mode of distribution. As often happens, the beneficiaries are divided. Whereas there is no dispute as to the identity and number of beneficiaries there is no agreement on the mode of distribution. The proposal by **Julius Kamande Chomba**, the 2nd administrator is supported by **Tabitha Muthoni Chomba** (3rd Administrator), **Cecilia Njeri Mbugua**, **Michael Kimani Ngaruiya**, **Dorcas Wacheke Munjuga** and **George Njuguna Chomba**.
3. The proposal is that the three undisputed assets of the estate be distributed as follows: **NAIVASHA/MARAIGUSHUBLOCK 1/1303** and **1307** measuring 3 ½ and 1 ¼ acres respectively be shared equally between **Julius Kamande Chomba**, **Tabitha Muthoni Chomba** and **George Njuguna Chomba**.
4. It is further proposed that the parcel of land measuring 1.4 acres, namely **NAIVASHA/MARAIGUSHU BLOCK 1/448** be sold and shared between **Cecilia Njeri Mbugua**, **Bonfas Murigi Rutere**, **Julius Kamande Chomba**, **Cecilia Njoki Mwangi**, **Dorcas Wacheke Munjuga**, **Tabitha Muthoni Chomba**, **George Njuguna Chomba** and **Michael Kimani Ngaruiya**.
5. The beneficiaries **Bonfas Murigi Rutere** (1st Administrator) and **Cecilia Njoki Mwangi** are opposed to this mode of distribution. **Cecilia Njoki Mwangi** proposes that plot number **NAIVASHA/MARAIGUSHU BLOCK 1/1303** be shared as follows. A half-acre goes to **Njuguna Ngarachu**, a purchaser, and the balance be shared by the 3 administrators together with **Bonfas Murigi Rutere**, **Peter Mwangi** (deceased) and **Cecilia Njoki Mwangi**. She excludes **Cecilia Njeri Mbugua**. Ditto for the land parcel **NAIVASHA/MARAIGUSHU BLOCK 1/1307**. She also proposes that the

land parcel **NAIVASHA/MARAIGUSHU BLOCK 1/448** be shared by the same beneficiaries including **Cecilia Njeri Mbugua**.

6. For his part **Bonifas Murigi Rutere**, the protestor who occasioned the revocation of the confirmed grant, proposed as follows. Land parcel **NAIVASHA/MARAIGUSHU BLOCK 1/1303** and **1307** be shared between:

- i) Bonfas Murigi Rutere
- ii) Julius Kamande Chomba
- iii) Tabitha Muthoni Chomba
- iv) George Njuguna Chomba
- v) Peter Mwangi Chomba (deceased)
- vi) Cecilia Njoki Mwangi

7. He also proposes that the plot number **NAIVASHA/MARAIGUSHU BLOCK 1/448** be shared among the same persons.

8. **Cecilia Njeri Mbugua** while supporting the 1st Administrator's views says she has no interest in the land parcels **NAIVASHA/MARAIGUSHU BLOCK 1/1303** and **1307** but she does want a share of **NAIVASHA/MARAIGUSHU BLOCK 1/448**. Ditto **Michael Kimani Ngaruiya** the representative of deceased daughter **Grace Wanjiru Kimani** who appears only interested in **plot 448**. As for the widow of **Peter Mwangi Chomba**, one **Dorcas Wacheke**, she makes no claim over **plot 1303** and **1307** but proposes to share in **plot 448**. **George Njuguna Chomba** agrees with **Julius Kamande Chomba** and **Tabitha's** proposal.

9. I have considered in addition affidavits earlier filed by parties in connection with the application for revocation, in particular by **Bonfas Rutere Murigi** and **Julius Kamande Chomba** on 18th June, 2015 and 20th March, 2015 respectively. It would appear that the parcels **NAIVASHA/MARAIGUSHU BLOCK 1/1303** and **1307** were sub-divisions of **NAIVASHA/MARAIGUSHU BLOCK 1/170** carried out by the deceased. And that the sons **Julius Kamande Chomba**, **Peter Mwangi Chomba** and **George Njuguna Chomba** each received 1 ¼ acres. Ditto the daughters **Tabitha** and **Cecilia**.

10. **Grace Wanjiru Kimani**, the deceased wife to **Michael Kimani Ngaruiya**, and her brother **Bonfas Murigi Rutere** did not get any land at Maraigushu. Instead **Bonfas** got 1 ½ acres at Kahuro, Muranga. Maraigushu Sub-divisions 1307 and 1303 were retained by the deceased and his wife. **Bonfas Murigi Rutere** admitted these details in his affidavit of 18th June, 2015. He also admits that the beneficiaries of the sub-division of **Block 1/170** were each required to pay Kshs 12,000/= to the deceased, being the cost of sub-division, and they paid.

11. **Bonfas Murigi Rutere** was excluded from the arrangement because he was not to inherit any part of the subdivided Maraigushu land, and secondly, he seemed to have had a difficult relationship with the deceased. He insists that the remaining land ought to be shared equally between the beneficiaries. The fact that **Cecilia Njeri Mbugua**, **Michael Kimani**, **Dorcas Wacheke Munjuga** do not lay any claim on the Maraigushu land supports the assertion that indeed the subdivision cost was met by the 2nd and 3rd administrators the latter who being an unmarried daughter resides at the family home at Maraigushu.

12. Although the deceased died intestate he had held a meeting on 4th April, 2010 with his children, including **Bonifas**, **Julius**, **Patrick**, **Peter**, **George** and **Michael Kimani** to discuss sharing of the land at Maraigushu resulting from the subdivision of parcel number 1/170. The deceased expressed his wishes that only those who had paid for the subdivision would get a share, and that **Tabitha Muthoni** would

inherit a portion of land at the home, while **Bonfas** was to retain the 1 ½ acres in Murang'a. All those present were agreeable and signed. In his affidavit filed on 18th June, 2015, **Bonfas** confirmed these matters. This document though not a will captures an agreement made between the deceased and his children.

13. The deceased having died intestate, Section 38 of the Law of Succession Act would apply. However, under Section 42 of the Law of Succession Act, the court is entitled to consider any gift *intervivos* to beneficiaries. Secondly, equal sharing does not necessarily mean precisely similar shares, at times nearly impossible, but rather equity.

14. Distribution of estates is about equity not necessarily equality. As **Omollo J A** (as he then was) stated in **Rono -Vs- Rono [2005] Eklr:-**

“I had the advantage of reading in draft form the judgment prepared by Waki, J.A., and while I broadly agree with that judgment, I nevertheless wish to point out that I do not understand the learned Judge to be laying down any principle of law that the Law of Succession Act, Cap 160 of the Laws of Kenya, lays down as a requirement that heirs of a deceased person must inherit equal portions of the estate where such deceased dies intestate and that a judge has no discretion but to apply the principle of equality as was submitted before us by Mr. Gicheru. I can find no such provision in the Act.

My understanding of that section is that while the net intestate estate is to be distributed according to houses, each house being treated as a unit, yet the Judge doing the distribution still has discretion to take into account the number of children in each house. If Parliament had intended that there must be equality between houses, there would have been no need to provide in the section that the number of children in each hose be taken into account.

Nor do I see any provision in the Act that each child must receive the same or equal portion. That would clearly work an injustice particularly in a case of a young child who is still to be maintained, educated and generally seen through life. If such a child, whether a girl or a boy were to get an equal inheritance with another who is already working and for whom no school fees and things like that were to be provided, such equality would work an injustice and for my part, I am satisfied that the Act does not provide for that kind of equality.”

15. **Bonfas Murigi Rutere** obviously did not pay for the subdivision of the Maraigushu land and acknowledged that he was therefore not entitled to benefit therefrom. Unlike those who were present at the meeting and clearly lay no claim to the land for this reason, he has insisted on sharing the Maraigushu land equally with the others. I think it is dishonest of him to dispute a document containing the agreement that he signed only because his father is dead. He also cannot hope to be allowed to benefit from the expenses incurred by his siblings while also retaining a larger piece of land in Muranga.

16. Thus I agree with the proposal of the majority of the beneficiaries that the two land parcels number **1303** and **1307** at Maraigushu, be shared equally by Julius, Tabitha and George in equal portions.

17. As regards the developed land parcel number **1/448**, it is only fair that because it is not a sub division of Block 1/170, it should be sold and the proceeds be shared by all the following beneficiaries:-

- i) Cecilia Njeri Mbugua
- ii) Bonfas Murigi Rutere
- iii) Julius Kamande Chomba
- iv) Cecilia Njoki Mwangi
- v) Dorcas Wacheke Munjuga

vi) Tabitha Muthoni Chomba

vii) George Njuguna Chomba

viii) Michael Kimani Ngaruiya

18. There was a beneficiary **Njuguna Ngarachu** listed in the confirmed grant of 29th October, 2014 (in the lower court). He is mentioned in the affidavits of **Bonfas Murigi Rutere** and **Cecilia Njoki Mwangi** but he did not participate in the proceedings. Thus it is hard to tell when and how he purchased the land. Because, none of the beneficiaries had any legal standing to dispose of the estate before the confirmation of the grant. I make no orders regarding **Njuguna Ngarachu** concerning the distribution of the estate.

19. Thus the estate will be shared as follows:

<u>Property</u>	<u>Name</u>	<u>Share</u>
1 NAIVASHA/ MARAIGUSHU BLOCK 1/1303	JULIUS KAMANDE CHOMBA TABITHA MUTHONI CHOMBA GEORGE NJUGUNA CHOMBA	ALL TO SHARE EQUALLY
2 NAIVASHA/ MARAIGUSHU BLOCK 1/1307	JULIUS KAMANDE CHOMBA TABITHA MUTHONI CHOMBA GEORGE NJUGUNA CHOMBA	ALL TO SHARE EQUALLY
3 NAIVASHA/ MARAIGUSHU BLOCK 1/448	CECILIA NJERI MBUGUA BONFAS MURIGI RUTERE JULIUS KAMANDE CHOMBA CECILIA NJOKI MWANGI DORCAS WACHEKE MUNJUGA TABITHA	TO BE SOLD AND THE PROCEEDS BE SHARED EQUALLY BY BENEFICIARIES

	MUTHONI CHOMBA GEORGE NJUGUNA CHOMBA MICHAEL KIMANI NGARUIYA	
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20. Each party will bear own costs.

Delivered and signed at Naivasha this 16th day of March, 2018.

In the presence of:-

Mr. Gichuki for Respondent in application

Bonfas Murigi Rutere in person

Court Clerk - Quinter Ogutu

C. MEOLI

JUDGE