



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

SUCCESSION CAUSE NUMBER 425 OF 2009

IN THE MATTER OF THE ESTATE OF GRACE MBITHE MULI ALIAS KAVENI MUTIO YOMBIA (DECEASED)

GABRIEL MAILU MUTIO.....PETITIONER

VERSUS

LAWRENCE KAMUYA MUTIO.....1ST OBJECTOR

JOSEPH MUTUAL MUTIO.....2ND OBJECTOR

JUDGMENT

1. This judgment is in respect of the estate of Grace Mbithe Muli alias Kaveni Mutio Yombia (Deceased).
2. The Petitioner and the Objectors are joint administrators pursuant to a consent of the parties recorded on the 28/7/2011.
3. Each party had filed their proposed distribution, the Petitioner on 18/8/2011 and the Objectors on 26/11/2012. Directions were given that matter proceeds by way of *viva voce* evidence.
4. Before commencement of the hearing, the parties approached the Court on 21/11/2013 with an agreement on the distribution of LR. No. Nyandarua/Mirangine/200 and a consent was recorded as follows;
 - (i) Gabriel Muilu Mutio - 5 acres
 - (ii) Joseph Mutua Mutio - 5 acres
 - (iii) Lawrence Kamuya Mutio - 5 acres
 - (iv) Anne Minoo Mutio - 2 acres
 - (v) Elizabeth Ngina Mutio - 2 acres
 - (vi) Rachel Wayua Mutio - 2 acres
5. The Petitioner and the 1st Objector gave oral testimony. The Petitioner accused the 1st Objector of cutting trees from the estate and selling the same for Kshs. 200,000/=. He is also accused of selling 2 cows in June 2014. The 2nd Objector is accused of selling 1 cow of Kshs. 19,000/=.
6. The Petitioner seeks to share the proceeds for the sales. He proposes that Ngina should get one cow.
7. When cross-examined, he confirms agreement with the consent on the distribution recorded in Court. He had no valuation report in respect of trees allegedly cut.
8. The 1st Objector testified that the Petitioner and his son Keli cut trees from the estate. He maintained the proposals for distribution as per his affidavit. Over and above reiterating distribution as per the consent recorded, the 1st Objector proposes that the remaining cows be given to Elizabeth Ngina Mutio as a token for taking care of the mother (deceased).

9. On record are affidavits by Grace Nthenya Mutua and Ajelline Muindi alias Anjeline Wanduru Mundi renouncing their right to inherit.
10. Suffice it to note that the allegations and counter allegation on the sale of trees and cows have not been adequately substantiated or proved. A fact is not proved if it is neither proved nor disproved.
11. The issue of distribution of LR. No. Nyandarua/Mirangine/200 is settled by the consent of the parties recorded in Court on 21/11/2013 and further confirmed by the evidence on record.
12. As regards the distribution of the cows, I have considered the material before me and I am persuaded that the same should be given to Elizabeth Ngina Mutio.
13. With the result that the grant herein is confirmed. The distribution of the estate shall be as follows;

1. LR. No. Nyandarua/Mirangine/200

- (I) Gabriel Muilu Mutio - 5 acres
- (ii) Joseph Mutua Mutio - 5 acres
- (iii) Lawrence Kamuya Mutio - 5 acres
- (iv) Anne Minoos Mutio - 2 acres
- (v) Elizabeth Ngina Mutio - 2 acres
- (vi) Rachel Wayua Mutio - 2 acres

2. 2 cows to Elizabeth Ngina Mutio

14. Each party shall bear its own costs.

Dated and Signed at Nakuru this 23rd day of May, 2018.

A. K. NDUNG'U

JUDGE