



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT MERU**  
**SUCCESSION CAUSE NO. 309 OF 1994**  
**IN THE MATTER OF THE ESTATE OF M'MAGIRI M'IKABU-DECEASED**  
**JULIUS GENNINGS GICHOGA.....1<sup>ST</sup> PETITIONER**  
**ERASTUS MUGIIRA M'MAGIRI.....2<sup>ND</sup> PETITIONER**  
**VS**  
**MWINGOKA SELF HELP GROUP.....1<sup>ST</sup> PROTESTER**  
**JANET KAIMURI KINYUA MWAL.....2<sup>ND</sup> PROTESTER**

**RULING**

Julius Gennings Gichoga and Erastus Mugiira M'Magiri petitioned for Letters of Administration to the estate of the deceased herein who died on 15<sup>th</sup> April 1985 while domiciled in Meru District.

In the affidavit in support of petition for Grant of Letters of Administration intestate the 2 petitioners listed the names of the wife of the deceased and children of the deceased as well as a full inventory of assets forming part of the estate. Grant was made on 18<sup>th</sup> March 1996 to Erastus Mugiira M'Magiri and Julius Gennings Gichinga.

The names of the children are:

- a. Erastus Mugiira
- b. James Kiambi
- c. Marion Karimi
- d. Harriet Tirindi
- e. Catherine Rigiri
- f. Juster Kaburu Riungu
- g. Julius Gennings Gichoga.

The inventory of assets:

- a. Nkuene/U-Mikumbune/767
- b. Nkuene/L-Mikumbune/100
- c. Nkuene/Taita/280

d. Plot no. 15B- Nkubu market

e. Plot no. 6C – Nkubu Market.

Prior to the grant being made and confirmed the three sons of the deceased entered into an agreement with the Mwingokia Self help group the 1<sup>st</sup> protesters as well as John Mutea Mwongo on 6<sup>th</sup> of July 1987 to sell portions of L.R. Nkuene/taita/280 i.e. 22 ft by 160 ft and 22 ft and 150 ft respectively. Subsequently John Mutea Mwongo sold his portion to Janet Kaimuri Kinyua Mwai on 20<sup>th</sup> February 1999 with the understanding that upon the completion of the succession cause herein the portion that had been sold to John Mutea Mwongo will be transferred to her directly. The sale agreements to the protesters as well as to John Mutea have been annexed as well as minutes of the clan meeting held on 12<sup>th</sup> September 2012 in which it was discussed how the estate of the deceased was to be shared and the interest of the purchasers was also discussed. These protesters filed the objections when the three sons of the deceased had internal disagreements and threatened to renege on the agreements.

By an application dated 5<sup>th</sup> May 2015, Julius Gennings Gichoga sought that the grant that was made to him and Erastus Mugiira be confirmed. There is a consent to mode of distribution and confirmation dated 30<sup>th</sup> April 2015 that is signed by the deceased's persons children except Erastus Mugiira.

In the supporting affidavit Julius Gennings Gichoga has distributed the estate amongst the three sons only leaving out the daughters and the widow to the deceased. The widow to the deceased and the daughters did not file any affidavit denouncing their interests in the estate and it will be important to have them attend court and expressly denounce their interests before the mode of distribution by Julius Gennings Gichoga can be confirmed. In regard to parcel of land no. L.R Nkuene/Taita/280 the protesters/objectors have given overwhelming evidence that they are interested parties and have even taken occupation of the portions sold to them by the three sons of the deceased. Julius Gennings Gichoga has distributed Parcel of land no Nkuene/Taita/280 to himself and James Kiambi at 34% and 33% leaving a balance of 33% for disposal. It is not indicated how is to be disposed and this is possibly the parcel that is due to the objectors/protesters. So the order of this court is that upon completion of the succession cause the administrator will be under obligation to transfer the portions of this land to the objectors because they had already received consideration for it.

As at the time of hearing of the objection/protest this court learnt that Erastus Mugiira and James Kiambi Magiri were already deceased and therefore the court cannot go ahead and confirm the distribution to them as proposed by Julius Gennings Gichoga. There will be need to identify their survivors and have their shares of the estate devolved to those survivors. This court's order is therefore that this succession will be subject to redistribution of the estate after identification of the survivors of the deceased beneficiaries and attendance in court of the widow and daughters of the deceased if alive.

No orders as to costs.

**HON. A.ONG'INJO**

**JUDGE**

**RULING SIGNED, DELIVERED AND DATED THIS 23<sup>RD</sup> DAY OF MAY 2018.**

**In the presence of:**

C/A: Penina

Petitioner: N/A

Objector: N/A

**Order**

Notice of ruling to issue to parties. Mention 20.06.2018 for further directions.

**HON. A.ONG'INJO**

**JUDGE**