



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

SUCCESSION CAUSE NO. 320 OF 2015

IN THE MATTER OF ESTATE OF JULIA KAIMURI alias JULIAH KAIMURA (DECEASED)

JAMES KINYUA M'THURANIRA

HILDAH KAIMURI KATHIRI.....PETITIONERS

VERSUS

ALICE KIBURIO MUTEGI.....OBJECTOR

RULING

Grant of Letters of Administration to the estate of Julia Kaimuri alias Juliah Kaimuri the deceased herein was made on 20th May 2016 to Joel Kamathi M'Ikiome, James Kinyua M'Thuranira and Hellen Kagendo.

Application for confirmation of grant was made by application dated 28th February 2017 and filed on 1st March 2017. The application is supported by affidavit of James Kinyua and Hellen Kagendo, who swore joint affidavit.

Consent to James Kinyua and Hellen Kagendo to seek for distribution is signed by Hildah Kaimuri Kathuri, James Kinyua and Hellen Kagendo. Alice Kiburio Mutege has not signed.

Consent to confirmation is signed by Hildah Kaimuri alone, Alice Kambura Kiburi filed affidavit of protest to confirmation on 14.9.2017 averring that she was not informed of the filing of petition and she suspected she might be denied her rightful share as the petitioners are grand children to the deceased. She said she needed family members to agree on mode of distribution first before confirmation can be done. She said she is the only surviving beneficiary daughter to the deceased Julia Kaimuri who did not have any dependants. She proposed distribution as follows:-

1. L.R. Kiirua/Naari/Maitei/648 to be distributed to:-

- a) James Kinyua – 1 acre
- b) Hellen Kagendo – 0.5 acre
- c) Idah Kaimuri – 0.5 acre

2. Kiirua/Naari Maitei/650 & 651 to given wholly to her. This is in affidavit sworn on 11th October 2017. James Kinyua in Replying Affidavit sworn on 13th November 2017 agreed with 2nd Administrators averments at paragraphs 1 to 17 in which it is said that the deceased was their grandmother and that their mother Loice Ntiribi Kathiri died.

Hildah Kaimuri the 2nd Administrator said that her and her siblings were entitled to L.R. No, Kiirua/Naari/650 which the protester has continued to use without due regard to their rights.

They said the protester had been given parcel of land No. 651 and parcel No. 650 is supposed to go to the children of the late Loice Ntiribi.

It was also averred at paragraph 11 that James Kinyua the 1st Administrator is son to the late Susan Mukonjori and is entitled to Kiirua/Naari/648 and proposal by the protesters that it should be shared is wrong as it is oppressive and unfair. At paragraph 13 it was averred that during her lifetime the deceased had commenced process of transferring L.R. Kiirua/Naari/650 to 2nd Administrator and her siblings and she annexed application to LCB.

In further affidavit in protest sworn on 28th March 2018 Alice Kambura Kiburio L.R. No. Kiirua/Naari/485 was 8 acres and it was divided into 4 portions of 2 acres each and given different members 651, 648, 649 and 650. That L.R. 649 was transferred to the late Joyce Ntimari Koome and that being she is only surviving daughter she is entitled to 3 acres of land to be taken from L.R. No. s Kiirua/Naari –Maitei/650 and 651. She said she tendered and cared for the deceased until she died and it was the deceased persons wishes that she gets 3 acres of land.

She said Jaimes Kinyua is son to her late sister, Susan Mukonjori and Hellen Kangendo and Hildah Kaimuri are daughters of the later sister Loise Ntiribi Kathiri. She also said that the children of her late sister Jeniffer Mutoro had not been provided for as per protest by Doris Gacheri Thurairira, Alice Kamburu admitted that his brother Joel Kamathi's omission was proper as had been given 28 acres of land by the deceased. She said her late sisters had other children other than the 4 proposed beneficiaries and it is only fair that each of her late sisters estates should get an acre each she gave proposal of distribution at paragraph 18.

She said she was not aware if deceased started process of transferring land to her grandchildren as averred in paragraph 13 of Hildah's affidavit.

Dorris Gacheri Thurairira also filed affidavit of protest to distribution and agreed with Alice Kambura Kiburio averments in proposing distribution. P and A5 filed on 26th May 2015 lists names of survivors as

- Francis Rithara – son – but deceased.
- Loise Ntiribi-daughter- Deceased.
- Jeniffer Mutoro – Daughter –deceased
- Joel Ntinyari Kiome – Deceased daughter
- Susan Mukonyori – daughters – Deceased.
- Alice Kiburio – daughter

The net intestate estate is made up of land parcel No. L.R. Kiirua/Naari-Maitei/648, 649,650 and 651 all approximately valued at Kshs 10,000,000/=.

The petition for Letters of Administration was filed jointly by Joel Kamathi M'Kiome son to the deceased jointly with James Kinyua, and Hellen Kagendo grandchildren to the deceased. Before Joel died the petitioners had cited protest to seek Letters of Administration to the estate as the one having priority but she didn't take action. It was therefore in order for the 3 to take out Letters of Administration.

The protester has no dispute that it is only her and her late sisters children who are to benefit from distribution of the estate herein she said her late sister Joyce Ntinyari already got her share during the life time of the deceased namely L.R. Kiirua/Naari/649.

What remains for distribution is L.R. No. 648, 650 and 651 between the protester and the survivors of Loise Ntiribi(deceased) Jennifer Mutoro (deceased) and Susan Mukonjori. The administrators have set aside L.R. Kiirua/Naari –Maitei/651 – measuring 2 acres.

What remains for the beneficiaries survivors are therefore only 2 parcels of land namely Naari/648 and 650 to be shared equally survivors of :-

- Loise Ntiribi to get – 1.33 acres
- Jennifer Mutoro – 1.33 acres
- Susan Mukonyori -1.33 acres to come from the above 2 parcels of land.

The shares to be held in trust by Hellen and Hilda for the children of Loise Ntiribi.

Doris Gacheri to hold in trust for the children of Jennifer Mutoro and James Kinyua to hold in trust for the children of Susan Mukonjori. In event that it is established that the late Jennifer benefited inter vivos that what is distributed to her survivors should be shared equally between the children of Susan and Loise. Each Party will bear their own costs. Orders accordingly.

HON. A.ONG'INJO

JUDGE

RULING SIGNED, DELIVERED AND DATED THIS 27th DAY OF JUNE 2018.

IN THE PRESENCE OF:

C/A: Penina

Court:

Called forward as I will not be in on 28th June 2018

Mrs Ntarangwi for Petitioner.

Mr Mutuma Advocate for Protesters.

HON. A.ONG'INJO

JUDGE

Order

Copy of ruling to be supplied to counsels for party's certificate of confirmation to issue.

HON. A.ONG'INJO

JUDGE