



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

SUCCESSION CAUSE NO. 316 OF 2007

IN THE MATTER OF ESTATE OF M'IKIUNGA KATHEMEURA (DECEASED)

MARICELLA MUKIRI M'KIUNGA.....PETITIONER

VS

MARGARET KURI MUNORU.....PROTESTER

JUDGMENT

M'Ikiunga Kathemeura the deceased person herein died on 15th June 1970 and was survived by:-

- Margaret Mucuri – widow.
- Maricella Mukiri – daughter
- Johanina Kagwiria –daughter
- David Kiogora –Son

The chief of Mulathankari wrote letter dated 10th August 2007 identifying the beneficiaries as well as the property making up the estate as parcel of land No. Nyaki/Mulathankari/492 – measuring 1.04 Ha. Maricella Mukiri M'Ikiunga petitioned for grant of Letters of Administration which was made to her on 14th November 2007.

When she sought for confirmation of the grant by an application dated 5th May 2008. She proposed distribution as follows:-

L.R. No. Nyaki/Mulathankari/492.

- a) Mercy Micheni – Purchaser – ¼ acre
- b) David Kiogora – 1 acre
- c) Margaret Muchuri – 1 acre
- d) Maricella Mukiri – Balance

Margaret Kiuri Munoru filed affidavit of protest to confirmation saying she was the oldest child to the deceased and she was surprised when she learnt of the petition had been filed without her knowledge.

She said the petitioner is her step sister but didn't include her when filing petition. She averred she suspected the petitioner would dispose off the estate. She said she is claiming an equal share with the petitioner. She said petitioner had described herself as unmarried and yet she is married and has children. She said David Kiogora is not deceased person's son as described. She averred she does not know Mercy Mucheni and she doesn't support her claim. She averred there is no basis for David to get a whole one acre when he is not the deceased person's son.

The protest was canvassed by viva voce evidence. The protester said that her mother died while she was breastfeeding and her father married a 2nd wife who later died without giving birth. That when Margaret Muchuri was married as 3rd wife of the deceased. She came with a son known as David Kiogora. Protester said she complained to chief of Mulanthankari who wrote another letter confirming she was eldest daughter of the deceased. She said that she is entitled to one acre of land since the petitioner has sold her portion. She said Kiogora was to take ½ acre. She said Joanina should take and share one acre with the petitioner. She said petitioner lives with her husband on her father's land. She said title to her father's land was left with chief and he was not to give to the petitioner. She said it is 2nd wife who left title with

chief to protect/secure it.

2nd Protester witness Samuel M'Mureithi reiterated what the protester said and confirmed she was daughter to deceased persons 1st wife who died. He said 2nd wife didn't have children and that 3rd wife got married and had 2 children with the deceased – daughters and that she had come with one son David Kiogora. Samuel M'Mureithi said the deceased was his uncle. He said he is older than both the protester and petitioner. He said that protester had another child known as Ntibuka and Protester said her sibling died. He said he had no problem if Kiogora inherited the deceased previous estate.

The Petitioner, the protester was not known to her. She said her father had 2 wives and the 1st wife didn't have children. She said they are 3 siblings and she has always seen David Kiogora staying with them on parcel of land in question but she didn't know he was born of her father. She said she obtained chief's letter before petitioning for letters of Administration. She said protester is married close to their home and she had never known her as deceased person's daughter since she was born and she was not aware her mother was married to the deceased. She said chief Koome is the one who gave her the letter. Later Chief Koome again wrote another letter saying protester was also deceased persons daughter she said protester does not occupy the land in question.

Petitioner confirmed the chief kept title to her father's land and that her father had told chief to give her title if she because of age.

Protester said Mercy Micheni had bought land from her but she refunded purchase price. She said her father's wishes were that David Kiogora be given one acre of land.

2nd Petitioners witness Raphael Balamua said he was Assistant Chief for 26 years during which time in 1970s the deceased called him and gave him title to his parcel of land with instructions that he should hand it over to the petitioner once she becomes of age.

He said the deceased persons 2 wives and children were present when title was handed over to him. He said that there was a time they had a meeting at Chief Koome's office but nothing went on as protesters and petitioner created commotion. He confirmed that protesters mother was Nkairu. He said he was not yet married by 1940s and could not tell if the deceased married any other wife. He said he came to know the deceased when he became Assistant Chief and the protester was already married. Chief Koome Rukaria of Kaaga Location testified that he wrote a letter dated 10th August 2007 and subsequently wrote are dated 9th July 2005. He said he wrote 1st letter on instructions and from Margaret Mucuri. That later she learnt there was another of deceased person's daughter who was left out when 1st letter was written. He said he verified her information through elders and it was confirmed that protester was daughter to the deceased.

The Petitioner's mother surviving wife of the deceased was said to be sick and could not come to court to deny or admit that protester was deceased persons child. Raphael Botamia having said that he was not yet born by 1943 and could not tell whether deceased married protesters mother, this court finds that evidence of Samuel M'Mureithi and the evidence of chief Koome of Kaaga Location proves to required standard of balance of probability that the protester is daughter to the deceased and therefore entitled to benefit from the intestate estate.

In consideration that the constitution provides that every person is equal before the law the deceased persons estate shall be distributed equally amongst the dependant surviving widow and the beneficiaries namely:-

- Marcella Mukiri
- Johanina Kagwiria
- David Kiogora
- Margaret Kiiri Munoru

Certificate of confirmation to issue to that effect. There shall be no orders as to costs and therefore each party will bear their own costs.

HON. A.ONG'INJO

JUDGE

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

IN THE PRESENCE OF:

C/A:

Petitioner:- Mrs Ntarangwi Advocate for Petitioner

Protester :-Mr Anampiu Gikunda Advocate – Mr Nyenyire holding brief.

HON. A.ONG'INJO

JUDGE