



REPUBLIC OF KENYA

IN THE HIGH COURT KENYA

AT MERU

SUCCESSION CAUSE NO. 508 OF 2009

IN THE MATTER OF THE ESTATE OF THE LATE EDWARD M M'ARIMBA

M'INOTI alias ARIMBA INOTI alias M'ARIMBA M'INOTI - DECEASED

CATHERINE KAIMURI KARIMBA.....PETITIONER

VS

BEATRICE MUCECE.....OBJECTOR

RULING

Edward M'Arimba M'Inoti died intestate on 7th January 1991 and according to was survived by three widows, 6 sons and 5 daughters, 3 of his sons died before him and their names have also been given in P & A5.

The chief of Kathangari Location wrote a letter dated 3rd December 2008 identifying the survivors and the properties forming the estate. He gave names of the 3 widows as the administrators.

When the other 2 widows failed to take action to petition for Letters of Administration Catherine Kaemuri cited them. On 11.4.2013 Catherine Kaimuri and Beatrice Mucece were made Joint Administratrix of the estate. Application for confirmation was made dated 7th October 2014. It was supported with affidavit of Catherine Kaimuri Karumba who gave proposal as to distribution in paragraph 5. Beatrice Mucece also filed her affidavit with mode of distribution in affidavit sworn and filed on 21.12.2015.

In a further affidavit sworn by Beatrice Mucece on 26th August 2015 she said that L.R. Ngobit/Supuko Block 5/86 does not form part of the estate as it is registered in her name. Catherine Kaimuri in a further affidavit in response to objectors affidavit dated 26.8.2015 swore an affidavit on 26th August 2015 and averred that Beatrice Mucece transferred L.R. No. Ngobit/Supuko Block 5/86 after the death of the deceased into her name. She said the parcel at Ngobit was bought through deceased persons shares in South Imenti Investment Co. Ltd. She said the Objector didn't acquire the land on her own and had not shown evidence of acquisition. She said the objector had also transferred L.R. No. Abogeta/L.Kithangari/263 which they had allowed her to keep.

Inconsideration that the Land Registrar Laikipia has confirmed that L.R. No. Ngobit/Supuko Block 5/86 was transferred to Beatrice Mucece from the Government of Kenya and there is nothing to show expressly that the property belonged to the deceased, this court shall exclude it from the list of assets forming the intestate estate herein.

The green card for L.R. Aboget/L.Kithangari/263 shows that M.thuura Kajogi was 1st Registered appropriator on 7th October 1988 and on 4.10.1995 the same was transferred to Beatrice Mucece. The deceased herein is M'Arimba M'Inoti and not M'Thuura Kajogi from whom transfer to Beatrice Mucece was made. This property will also be excluded from list of assets in the estate. What remains for distribution is:-

L.R. Abogeta/L.Kithangari/221 – measuring 3.28 Ha which according to Beatrice Mucece should be distributed as follows:-

i. Catherine Kaimuri – 2.20 acres

ii. Ashford Muthomi

Rosemary Gacheru 2.29 acres to share equally.

Nancy Kawira

Alex Gitonga

iii. Beatrice Mucece to hold in trust?

iv. Boniface Mwenda Muthuri Markdonald Mutwiri, Risper Kagwiria – to get 1.23 acres to share equally.

(1) On the other hand Catherine proposes that L.R. Abogeta/L.Kithangari/221 be shared as follows:-

i. Catherine Kaimuri – $\frac{1}{4}$ share

ii. Ashford Muthomi – $\frac{1}{4}$ share to hold in Trust for

Rosemary Gacheri

Nancy Kawira

Alex Murithi

iii. Muthuri Boniface Mwenda to hold $\frac{1}{4}$ share for himself and Markdonald Mutwiri and Risper Kagwiria in equal shares.

iv Beatrice Mucece – $\frac{1}{4}$ share

(2) For L.R. No. Abogeta/L.Kithangari/199 – the proposal for distribution for by Catherine Kaimuri as follows:-

Muthuri Boniface

Markdonald Mutwiri To share equally

Risper Kagwiria

Proposal by Beatrice Mucece in respect to L.R. Abogeta/L.Kithangari/199 is similar to that of Catherine Kaimuri and the court will devolve this particular land as proposed.

(3) For L.R Abogeta/Nkachie/666 –measuring 4.05 Ha Catherine proposes distribution as follows:-

To be shared between two houses

i. Morris Mutemba Kirimi and Doreen Kawira to share half of the land equally.

ii. Muthuri Boniface Mwenda, Markdonald Mutwiri and Risper Kagwiria to share half of the land.

Beatrice Mucece proposes that L.R. Abogeta/Nkachie/666 be shared equally among the four houses.

(4) L.R.Abogeta/Lower Kiungone/514/63 – Measuring 0.0149 acres is proposed by Catherine Kaimuri as follows:-

$\frac{1}{2}$ share to 4th House for Beatrice Mucece and $\frac{1}{2}$ share to be held by Ashford Muthomi in trust for the Children in 2nd House to share equally. Beatrice Muceces proposal agrees with that of Catherine in respect to this property and it shall be allowed as such.

(5) Plot No. 15 A – Kanyakine Market is proposed by Catherine Kaimuri to be shared equally by Catherine Kaimuri, Muthuri Boniface and Douglas Karimba. There is no objection by Beatrice Mucece to this proposal and she has not made any proposal to manner. Catherine Kaimuri has distributed the plot.

(6) Catherine also proposed that all shares be registered in her name. She said this was a decision made in a family meeting on 12th July 2014. Beatrice Mucece on the other hand she proposed that the shares be distributed equally among the 4 houses. Submissions were made in respect to the mode of distributions by counsels for Catherine Kaimuri and Beatrice Mucece.

i. There being consensus as to distribution of L.R.Abogeta/L.Kithangari/199 the same will be distributed as follows:-

Muthuri Boniface

Markdonald Mutwiri To share equally.

Risper Kagwiria

ii. Beatrice Mucece and Catherine Kaimuri are in agreement that L.R. Abogeta/L. Kiungone/514/63 be shared between the 4th house and the 2nd house. i.e Ashford Muthomi to hold in trust half of the land for himself and his siblings in equal shares and Beatrice to hold half share in trust for herself and her children in equal shares.

iii. It is also not disputed that plot no. 15A at Kanyakine market should be shared equally by Catherine Kaimuri, Mutwiri Boniface and Douglas Kaimba.

That proposal will therefore be adopted by the court.

For the parcel of Land No. Abogeta/L.Kithangari/221 although there is variance as to distribution I do think the most fair and just proposal is that of Catherine Kaimuri that she gets $\frac{1}{4}$ share of the land for her house but the rider should be that she holds it for herself and her children with the deceased in equal shares.

Ashford Muthomi is also to hold $\frac{1}{4}$ share in trust for himself and Rosemary Gacheri, Nancy Kawira and Alex Murithi in equal shares. Muthuri Boniface Mwenda will hold $\frac{1}{4}$ share in trust for himself and Markdonald and Mutwiri and Risper Kagwiria in equal shares and lastly Beatrice Mucece will also hold $\frac{1}{4}$ share in trust of herself and her children in equal shares.

L.R. Abogeta/Nkachie/666 – measuring 4.05 Hectares should be distributed as proposed by Catherine Kaimuri as follows:-

Muthuri Boniface Mwenda

Markdonald Mutwiri $\frac{1}{2}$ to share equally

Risper Kagwiria

That is 2.025 Ha to share equally.

Morris Mutembei $\frac{1}{2}$ of the land to share equally i.e 2.025 ha

Doreen Kauria

Concerning the shares the same should devolve to the next of kin as indicated in the documents/certificates of shares at the different institutions where the deceased had the shares and/or bank accounts. In event there is no next of kin indicated then the surviving wives of the deceased should have equally.

The costs of the cause shall be defrayed from the estate of the deceased by the 2 widows from assets that can be disposed off easily.

Ruling Signed, Delivered and Dated 2nd Day of August 2018.

HON. A.ONG'INJO

JUDGE

In the presence of:

M/S Gikunda Anampiu Advocate for petitioner – N/A

Mr Murithi Advocate for Protester

Petitioner:- Present in person

Protester: Present in person

HON. A.ONG'INJO

JUDGE