



REPUBLIC OF KENYA

IN THE HIGH COURT KENYA AT MERU

SUCCESSION CAUSE NO. 374 OF 2002

IN THE MATTER OF THE ESTATE OF THE LATE M'MBURUGU BAITINYA - DECEASED

PHINEAS MUTAI GITONGA

SAMUEL KIRIMI

ESTHER KANYAMU.....PETITIONERS

RULING

In this cause, Chief Marimba vide a letter dated 12th November 2002 identified Alfred Gitonga as son to the deceased M'Mburugu Baitinyai who left behind asset Nkuene/Kathera/150. Later Phineas Mutai Gitonga was identified as a son and a beneficiary to the estate of the deceased. Grants of Letters of Administration were issued on 3rd April 2003.

On 26th June 2003, one Samuel Kirimi Gikunda applied for revocation or annulment of the grant. He stated that the Petitioner, Alfred was the son and Phineas as the grandson of the deceased. Further, he introduced himself as the grandson of the deceased, being the son of Robert/Albert Gikunda Mburugu; son of the deceased. By his supporting affidavit, he identified Florence Riinya and Esther Kanyamu as the surviving children of the deceased. He sought that the Letters of Administration be made to any at the surviving children at the deceased or children to the beneficiaries.

Esther Kanyamu was made Administrator and she filed application for confirmation in which she proposed mode of distribution of estate as follows:-

- a) Florence Riinya and Esther Kanyamu to get 0.40 Ha to share equally.
- b) Samuel Gitonga to get 0.52 Ha
- c) Justa Karimi
- d) Mary Kanyina
- e) Phneas Mutai 0.52 Ha to share equally
- f) Patrick Guantai
- g) Josphine Kanana

On the other hand, Phineas Mutai proposed that L.R. Nkuene/Katheri/150 be distributed as follows:-

- a) Samuel Gitonga 1 acre
- b) Alfred Gitonga 1 acre
- c) Phineas Mutai 0.50 acres
- d) Esther Kanyamu 0.50 acres
- e) Florence Riinya 0.50 acres

He said that the portions were well marked on the ground and that there is peaceful occupation and use at their respective portions. Further, he submitted that the land has been extensively developed by him. He stated that the proposed mode of distribution by Esther Kanyamu was against the wishes of the deceased.

Samuel Karimi, the 3rd Administrator, proposed as follows:-

- a) Florence Riinya 0.2 Ha
- b) Esther Kanyamu 0.2 Ha
- c) Alfred Gitonga's family 0.52
- d) Samuel Kirimi 0.52 Ha

From his Evidence, the deceased also had another daughter known as Jeniffer Ncekei whom he said was married and not interested in the estate. He also submitted that another of the deceased's daughters, Joyce Muthoni had been married and she died. He testified that the deceased had apportioned to him one acre of land which he was cultivating.

This court has been called upon to distribute the deceased's land fairly. The bone of contention between Phineas Mutai and Samuel Karimi is whether any one of them is entitled to the balance. The parties did not indicate what the balance was. It is clear that the land bequeathed to the grandsons of the deceased was done so inter vivos. It is not for this court to interfere with the wishes of the deceased if there is evidence to show his wishes and if the wishes are legal and fair

As such the court distributes L.r. Nkuene/Katheri/150 as follows

- a) Phineas Mutai 0.50 acres
- b) Samuel Kirimi Gitonga - 1 acre on account of his deceased's father's shares
- c) Esther Kanyamu
- d) Florence Riinya to share one acre
- e) Jeniffer Ncekei

This sharing should put into consideration the portions occupied currently by each of the beneficiaries for continued mutual existence.

It is so ordered.

HON. A.ONG'INJO

JUDGE

RULING DELIVERED, SIGNED AND DATED THIS 2nd DAY OF AUGUST 2018

IN THE PRESENCE OF:

C/A:- Penina

Mrs Ntarangwi Advocate for 2nd Administrator.

Mr Ondari holding brief for Mwirigi Advocate for 1st Administrator.

3rd Administrator – Present in person.

HON. A.ONG'INJO

JUDGE