



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

SUCCESSION CAUSE NO. 1 OF 2013

IN THE MATTER OF ESTATE OF M'MBOGORI M'IRAMBU - (DECEASED)

GEOFFREY MWONGERA M'IRAMBU.....PETITIONER

VERSUS

MBAYA MBOGORI.....PROTESTER

RULING

Grant of Letters of Administration to the estate of M'Mbogori M'irambu was made to Geoffrey Mwongera M'Mbogori on 25th day of March 2013.

Geoffrey Mwongera M'Mbogori filed an application for confirmation dated 25th September 2013 and in supporting affidavit proposed that parcel No. L.R. Abothuguchi/Githongo/489 measuring 5.30 acres be distributed in 4 equal shares to:-

- Mbaya M'Mbogori
- Laban Kibiti
- Judith Mwendwa
- Sabina Kithera
- Jerica Kainda
- Joshua Mutethia
- Alex Mutiga to consent to confirmation and distribution appears to have been signed only by Sabina Kithera the daughter in law of the deceased.

An affidavit of protest was filed by Mbaya Mbogori who said he is the eldest son and that the petitioner who had never lived on the land was influenced by the chief to secretly file succession cause and sold part of the estate without consulting him. He said area chief was forcing him to sign consent to confirmation and he declined. He said the petitioner had not fairly distributed the estate and had intermeddled with estate by selling to strangers. He said Laban Kibiti, M'Mbwiria is not entitled to inherit from his late father's estate.

The petitioner replied to protest and said all family members were at chief's office on 24th December 2012 and they were issued with a letter to enable them file the cause to the deceased estate. He said the protester had leased a portion of the deceased persons land for 21 years without consulting him on any other member of family and used the proceeds alone.

Petitioner said he sold his portion of the land to Laban Kibiti M'Mburia and he needed not consult anyone to do that or even to account for proceeds of sale of his share to anyone. He said the mode of distribution proposed by him is as per the wishes of the late father. The protester Mbaya Mbogori proposed mode of Distribution in affidavit sworn on 21st December 2015 as follows:-

1. Mbaya Mbogori – 1.325 acres
2. Geoffrey Mwongera – 1.325 acres

3. Z N

J M 2 of unsound minds and minor to share

M M 1.325acres

4. Alex Mutiga, B K (Minor) 1.325 acres to be held in trust by Mbaya Mbogori and Siriberia Rigiri Mbaya.

The petitioner/Administrator responded that none of the deceased children were of unsound mind as the protester would like the court to believe. Petitioner also said the protester had excluded other beneficiaries from the list of heirs and is not acting in good faith. The petitioner agreed with protester that their father had already identified portions of his land to his sons and that the daughters were to share a portion that the deceased left for himself. The statements of Stephen Njogu dated 13th May 2016 supports averments made by the Administrator. The application for confirmation and protest was canvassed by way of written submissions.

The list of beneficiaries and/or dependants to the intestate estate of the deceased is in letter of chief Makathi Location dated 24th December 2012. The deceased persons widow Alice Njiru had died by the date of writing this letter and from the affidavits on record and submissions filed on behalf of the protester and the petitioner this court finds that the fair and just distribution will be as follows:-

1. L.R. No. Abothuguchi/Githongo/489 shall be distributed as follows.

a. Geoffrey Mwongera – 1.325 acres

b. Mbaya Mbogori – 1.325 acres

c. Japhet Mbobua (deceased) -1.325 acres to be held in trust for his widow and the children equally by the wife and the Administrator herein pending letter of Administration to his estate being taken out.

d. Jerica Kainda – 0.442 acres

e. Florence Mukiri (Deceased) – 0.442 acres to be held in trust by Jerica Kainda and Geoffrey Mwongera in trust for the surviving 9 children of Florence Mukiri to share equally

f. Eva Kinya (deceased) to get 0.442 acres to be held by Jerica Kainda and Geoffrey Mwongera in trust for the surviving children of Eva Kinya the deceased in equal shares.

No orders as to costs.

HON. A.ONG'INJO

JUDGE

Ms Nyagah Advocate for Petitioner.

Ms Wambugu Advocate holding brief for Kaimenyi Advocate for Protester

Court

Ruling delivered dated and signed in court on 27th September 2018.

HON. A.ONG'INJO

JUDGE