



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

SUCCESSION CAUSE NO. 617 OF 2012

**IN THE MATTER OF ESTATE OF MUGWIRIA MBATARU - (DECEASED)**

GLADYS GATUNE MUGWIRIA .....1<sup>ST</sup> PETITIONER

GITARI MUGWIRIA.....2<sup>ND</sup> PETITIONER

VS

IRENE MUTHONI .....OBJECTOR/PROTESTER

**RULING**

The deceased Mugwiria Mbalaru died on 26<sup>th</sup> July 2004 and was survived by :-

- a. Gladys Gatune – wife/Widow
- b. Kithinji Mugwiria – son
- c. Patricia Nkinga – Daughter (deceased)
- d. Gerrald Kiruja – son
- e. Beatrice Karimi – Daughter
- f. James Mbaabu
- g. Japhet Kirimi
- h. Gitari Mugwiria
- i. Bilial Kamwari
- j. Catherine Mniegua
- k. Joyce Makena
- l. Esther Kaari

The deceased also left behind 2 parcels of land registered in his name:

- a. L.R. Igoji/Kiangua/303
- b. L.R. Igoji/Kiangua/957

Grant of Letters of Administration was made to Gladys Gatune Mugwiria and Gitari Mugwiria on 12<sup>th</sup> day of February 2013. By an application dated 21<sup>st</sup> February 2013 the administrators applied for confirmation of grant and distribution of the estate. The application was supported by affidavit of Gitari Mugwiria and consent of all beneficiaries except James Mbaabu Mugwiria.

Irene Muthoni filed an objection to grant on 22<sup>nd</sup> May 2013 claiming she was 2<sup>nd</sup> wife to the deceased. She said the 1<sup>st</sup> petitioner is 1<sup>st</sup> wife to deceased and mother of all the beneficiaries listed except James Mbaabu. She also claimed that Esther Kaari is daughter to the 1<sup>st</sup> wife but her name had been omitted from list of beneficiaries.

Irene Muthoni said she is the mother of James Mbaabu, Sarah Kagendo and Salome Nkuene who were not mentioned as beneficiaries.

She said her son was served with proceedings of this cause on 6<sup>th</sup> April 2013 and that is when she came to know about the cause.

She said the deceased had settled her and her children on parcel of land No. Igoji/Kiangua/303 while the petitioner and her children were settled on L.R. Igoji/Kiangua/957. She said proposed mode of distribution shut her and her children from her husbands estate and they are disinherited. She said the 2 parcels of land are 10 km apart from each other and each family lives independent of each other.

In her proposed mode of distribution she said that her and her children should be left to occupy L.R. Igoji/Kiangua/303 while Gladys Gatune and her children should occupy L.R. Igoji/Kiangua/957. The protest/Objection was canvassed by way of viva voce evidence and whereas the protester claimed that she was left residing on L.R. Igoji/Kiangua/303, her son and witness testified and said that it is him and Japheth and their respective families who stay on L.R. 303 and him and Japheth have tea bushes on the land in question. Objector witness no. 2 James Mbaabu said that his father the deceased called him in 1980 and gave him portion of land in L.R. Igoji/Kiangua/303. He said prior to being given land by his father he was staying with his grandfather. He said even his mother was staying with her father. He said his mother stays on another land which she bought but works with him on the land he was given by the father. He conceded that court will determine distribution of the deceased estate according to how each beneficiary uses the land and how much area he will get.

The 2<sup>nd</sup> Administrator Gitari Mugwiria in opposition to protest said that he wants the deceased persons estate distributed according to the affidavit he swore on 23<sup>rd</sup> May 2017. He said he came to know the protester only recently. He said his father had only wife the 1<sup>st</sup> Administrator and had eleven children as per paragraph 11 of his affidavit. He said that James Mbaabu son of Irene Muthoni was brought home by the deceased and deceased persons brother in 1984. He said that he was the one occupying and using L.R. Igoji/Kiangua/303 and his father told him to allow James Mbaabu use half of the land and he had no dispute. That when he petitioned for Letters of Administration he took papers to Jams to sign and he refused. He said protester was never brought home by deceased as his wife. He said the protester stays 2 km away in her fathers home and doesn't reside on L.R. 303.

2<sup>nd</sup> Petitioner witness Wilfred Kaburu was Assistant chief Kiangua sublocation for 22 years and he said the affair between the deceased and the protester resulted in the birth of James Mbaabu out of wedlock. He said the other children to protester were not fathered by the deceased. He said Japhet, James Mbaabu and Gitaru have their tea bushes on L.R. 303 and that Mbaabu has his home on same parcel. Retired Assistant chief said protester Irene Muthoni had never lived on L.R. 303 as claimed and that James Mbaabu was brought to the land in 1984.

From evidence on record the issue for determination is whether the protester is a beneficiary/dependant of the deceased and therefore entitled to inherit from his intestate estate.

From evidence of James Mbaabu, Gitari Mugwiria and the former Assistant chief Wilfred Kaburu it is obvious that the protester was not the wife of the deceased but that she didn't also occupy L.R. Igoji/Kiangua/303 the way she claimed. According to her son James Mbaabu he used to stay with his mother at his maternal grandfathers place and later the mother bought land on which she resided. Gitari Mugwiria testified that it was after the deceased brought James Mbaabu home that the protester started visiting him but didn't stay with him. It is not therefore true that the deceased married the protester and she can't lay claim to the deceased persons estate. The protest can't stand and it is dismissed with costs.

The estate of the deceased shall be distributed as follows:-

1. L.R. No. Igoji/Kiangua/957

- a. Gladys Gatune – 0.2757
- b. Joyce Makena - 0.125 acres
- c. Catherine Mugwiria - 0.125 acres
- d. Esther Kaari - 0.125 acres
- e. Beatrice Karimi - 0.125 acres
- f. Bilia Kamwari - 0.125 acres
- g. Japhet Kirimi – 0.50 acres

h. Gitari Mugwiria - 1.00 acres

i. Gerald Kiruja -0.80 acres

**2. L.R. No. Igoji/Kiangua/303 1.9 ha – 4.695 acres**

a. James Mbaabu - 1.50 acres

b. Japheth Kirimi – 1.00 acre

c. Gitari Mugwiria – 0.50 acres

d. Kithinji Mugwiria -0.50 acres

e. Gerald Kiruja 0.50 acres

f. 0.695 to be shared jointly between the widow and the daughters of the deceased.

No orders as to costs. Orders accordingly.

**HON. A.ONG'INJO**

**JUDGE**

**RULING SIGNED, DELIVERED AND DATED THIS 27<sup>th</sup> DAY OF SEPTEMBER 2018.**

**HON. A.ONG'INJO**

**JUDGE**