



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT CHUKA

SUCCESSION CAUSE NO. 197 OF 2015

(FORMERLY SPM CHUKA SUCCESSION CAUSE NO.88 OF 2008)

IN THE MATTER OF THE ESTATE OF THE LATE M'BUANI M'NKATHA

DOMINICA CIAKARUNDU.....1ST PETITIONER

EGIDIO NJAGI MBOANI.....2ND PETITIONER

VERSUS

DOMINICIANO NJAGI.....1ST PROTESTOR

SUSAN KAIMURI.....2ND PROTESTOR

J U D G M E N T

1. This cause relates to the estate of the late M'Buani M'Nkatha who died in Embu Hospital on 4th July 2005 resident in Chuka. He died intestate leaving behind the following dependants:-

- (i) Dominica Ciakarundu -widow
- (ii) Paskwale A.N. Nkatha
- (iii) Dominisiano Njagi
- (iv) Enos Mbare Basiani
- (v) Albino Njeru Angerino
- (vi) Tarasila Kageni (deceased)
- (vii) Corona Njeri
- (viii) Ejidio Njagi Mboani
- (ix) Alexander Kinyua
- (x) Nazarion Njeru
- (xi) Humprey Njagi
- (xii) Charles Gitonga

2. The Petitioners in this cause namely Dominica Ciakarundu M'Nkatha and Ejidio Njue listed the following properties as comprising the estate of the deceased herein namely:-

Later on the following property was added to the list namely L.R. NO. KARINGANI/MUIRU/1492.

3. Dominica Ciakarundu and Egidio Njagi Mboani were appointed joint administratrix and administrator respectively on 4th October, 2017 and on 22nd October 2017 they both took out summons for confirmation of the said grant giving the following proposal on their Supporting Affidavit on how the properties forming the estate should be distributed among the dependants.

(A) L.R. NO. KARINGANI/MUIRU/1492 (3.46 ACRES)

- a) Dominiciano Njagi
- b) Pakwale A. Njagi Nkatha Jointly
- c) Albino Njeru Anjerino

(B) L.R. NO. KARINGANI/NDAGANI/5184 measuring 2.73 ACRES

- a) Dominica Ciakarundu
- b) Mbare Enos Mbachani
- c) Egidio Njagi Mboani Jointly
- d) Alexander Kinyua Njagi
- e) Humprey Njagi
- f) Charles Gitonga
- g) Samuel Gitonga - 0.25 acres

(C) L.R. NO. KARINGANI/NDAGANI/5185 - **(1.8 acres)**

Egidio Njagi Mboani - whole

(D) L.R. NO. KARINGANI/NDAGANI/5186 - **(1.8 acres)**

Mbare Enos Mbachiani - whole

(E) L.R. NO. KARINGANI/NDAGANI/5187 - **(1.50 acres)**

Alexander Kinyua Njagi - whole

(F) L.R. NO. KARINGANI/NDAGANI/5188 - **(0.27 acres)**

Humprey Njagi - whole

(G) L.R. NO. KARINGANI/NDAGANI/5189 - **(1.50 acres)**

Humprey Njagi - whole

(H) L.R. NO. KARINGANI/ NDAGANI/5190 - **(1.50 acres)**

Charles Gitonga Mboani - whole

(I) L.R.NO.KARINGAI/NDAGANI/5191 - **(1.50 acres)**

Nazarino Njeru Mboani - whole

(J) L.R. NO. KARINGANI/NDAGANI/5192 - **(3.91 acres)**

- a) Dominica Ciakarundu

- b) Corona Njeru
- c) Mbare Enos Mbachani
- d) Egidio Njagi Mboani Jointly
- e) Alexander Kinyua Njagi
- f) Nazarino Njeru
- g) Humprey Njagi
- h) Charles Gitonga

4. Domiciano Njagi, one of the dependants or beneficiaries herein protested through an affidavit of protest sworn an affidavit on 2nd January, 2018 on the grounds that Samuel Gitonga Mboani should not have been considered in the distribution of the estate as he is not a dependant in his view. He has further alleged that he has been in occupation of parcel numbers 5184 and 5188 and that he has carried out developments thereon and therefore should not be given to other beneficiaries. He also opposed being given a share in parcel No. Karingani/Muiru/1492 stating that it is 11 Km away from where he is currently living therefore inconvenient. In his view Paskwale Mboani should not benefit from the distribution of the estate as he got a parcel No. Karingani/Muiru/587 from the deceased.

5. Susan Kaimuri, has also filed a protest claiming that she is married to Enos Mbare Barian who is a son to the deceased and that he is irresponsible and could sell the portion given to him unless the share in registered jointly with her to safeguard her interest and that of her children.

6. The protests herein were canvassed orally in court. Dominica Ciakarundu, the administratrix and testifying as PW1 proposed that L.R.KARINGANI/MUIRU/1492 be distributed among the following children:-

- (i) Dominiciano Njagi
- (ii) Paskwale A.N. Nkatha
- (iii) Albino Njeru

Her basis for that is that the 3 children had already benefitted from their respective shares, gifted to them by the deceased herein in Muiru. It was her evidence that Dominiciano had got 14 acres from the deceased and so if he is given one acre he will have 15 acres while Paskwale had gotten 14 acres and Albino got 8 acres. It was her contention that they should be contended with that arrangement as they all live in Muiru. She further justified her proposal to give Samuel Gitonga 0.25 acres claiming that the said proposed beneficiary had purchased that portion from the deceased although she could not recollect when the purchase took place. She further faulted Domiciano Njagi, the protestor herein for wanting to get more than other children. She further accused him of being hostile to her and having beaten her though she conceded not having reported the assault to the police.

7. The evidence of the 1st administrator was corroborated by the 2nd administrator in this cause namely Egidio Njagi Mboani. According to him, their deceased father subdivided his parcel No. KARINGANI/NDAGANI/167 into 9 portions namely; KARINGANI/NDAGANI/5184-5192 and assigned each portion to the following sons;

- (i) Enos Mbare
- (ii) Egidio Njagi
- (iii) Alexander Kinyua
- (iv) Nazarene Njeru
- (v) Humprey Njagi &
- (vi) Charles Gitonga

8. The 2nd Administrator further testified that their late father intended to process titles to each of the above beneficiary and since they could not raise the money required by the deceased to dispose part of the estate to Charles Gitonga who paid a deposit of Kshs.100,000/-. It was his testimony that the said purchaser never finished paying the balance because the deceased got sick and the process of transfer of the above parcels to the respective beneficiaries stalled. He faulted the protestor in his claim stating that he benefitted from a share of land in Muiru during the lifetime of the deceased and besides that have also given him a share in Karingani/Muiru/1492. He conceded that that they had been having squabbles over land in the family which began even during the lifetime of the deceased and that clan members came in and tried to arbitrate and that is how his late father ended subdividing his land at Karingani into 9 portions with a view to quelling the squabbles. He conceded that the protestor had initially agreed to an arrangement where he was to surrender six acres of the land he had been given at Muiru in exchange of parcel No. Karingani/Ndagani/5184 but that he later he reneged on the deal and kept his 6 acres at Muiru. He

insisted that the protestor, Paskwale and Albino all benefited from the following parcels given to them courtesy of the deceased.

- (i) Karingani/Muiru/586 - Albino
- (ii) Karingani/Muiru/587 - Paskwale
- (iii) Karingani/Muiru/588 - Protestor or Domiciano

9. Domiciano Njagi, the protestor herein on his part conceded that his late father had indeed subdivided his land at Ndagani into 9 portions as claimed by the petitioners. He further agreed with the petitioners herein that Albino Njeru was given parcel number **Karingani/Muiru/586** by the deceased herein and that he himself was given parcel No.588. He also agreed that there was some sort of an arrangement between him and the deceased or him to cede six acres of parcel **Karingani.Muiru/588** in exchange of three acres at Ndagani in view of the fact that he had grown Coffee and Tea at Ndagani (parcel No.5184).

10. The protestor was however categorical that Samwel Gitonga should not benefit from the estate as he was unaware of any transaction giving him the right to be given a share of the estate.

11. This court has considered the protest filed herein and the basis upon which it is filed. I heard and saw the witnesses testify including the 1st petitioner, (Dominica Ciakarundu) an old lady aged 100 years aging gracefully but still strong both physically and mentally. There is no dispute as to who the children of the deceased are. The deceased had 9 children with 1 child one of whom (Tarasila Kageni) is now deceased. The estate of the deceased is also not in dispute. They are;

- a) L.R. No. Karingani/Muiru/1492
- b) L.R. No. Karingani/Ndagani/5184 to 5192.

12. The only dispute between the protestor and the rest of the family members is recognition of one Samwel Gitonga as a purchaser of 0.25 acres having reportedly purchased from the deceased during his lifetime. The protestor also claims that he should get a share in parcel No. Karingani/Ndagani/5184.

13. The law relating to the distribution of an estate of a deceased person dying intestate is provided under **Section 35(1)** and **40** of the **Law of Succession Act**. The law requires that the net estate be subdivided equally with the widow being given life interest and being considered as an additional unit to the number of children. The number of children here are 11, so the widow or the 1st petitioner shall be added as an additional unit for purposes of distribution.

14. The petitioners have claimed that some three children namely;

- (i) Domiciano Njagi
- (ii) Paskwale A. Njagi Nkatha &
- (iii) Albino Njeru Anjerino benefited from a previous gifts in that the deceased during his lifetime gave them the following parcels.
 - a) Domiciano Njagi - Karingani/Muiru/588
 - b) Paskwale A. Njagi Nkatha - Karingani/Muiru/589
 - c) Albino Njeru - Karingani/Muiru/586

It is clear from the sequential numbering of the above parcels that the petitioners claims that the above 3 children/dependants benefited from the deceased during his lifetime is well grounded. The protestor is the only child protesting and although he deponed that he did not benefit, he benefitted actually admitted during trial that he indeed benefitted and that parcel No. KARINGANI/MUIRU/588 measures 13 acres. I have noted however that though he kept on shifting his position during trial he agreed that he had made arrangements with the deceased to surrender 6 acres in Karingani/Muiru/588 in favour of 3 acres of land at Karingani/Ndagani/5184. This court finds that the protestor's claim that he should be considered in the distribution of the remaining estate is quite unfounded and selfish considering that the remaining estate in total measures around 18.64 acres and there are nine dependants to be catered for and who did not get any share during the lifetime of the deceased. The provisions of **Section 42** of the **Law of Succession Act** states that any property given to any dependant during the lifetime of the deceased shall be taken into account during the final distribution of the net estate. The three sons Paskwale A.N Nkatha, Domiciano Njagi and Albino Njeru Anjerino having got bigger shares compared to what the remaining children will each get do not deserve to get anymore share as it would be unfair to the other beneficiaries.

15. I am however not persuaded by the petitioner's claim that Samuel Gitonga should be considered as a creditor and a beneficiary in the estate of deceased. The said Samuel Gitonga never appeared in this court to lay any claim in the estate and no evidence was laid before me to justify why he should be given a share in the estate in the absence of supporting documents or evidence. That claim must therefore fail.

16. In the premises the grant issued to the petitioners herein on 4th October 2017 is hereby confirmed as per the following distribution;

(A) L.R NO. KARINGANI/MUIRU/1492;

- (i) Mbare Enos Mbachani
- (ii) Egidio Njue
- (iii) Elexander Kinyua equal shares
- (iv) Nazerino Njeru
- (v) Humprey Njagi
- (vi) Charles Gitonga
- (viii) Dominica Ciakarundu- Life interest

(B) L.R. NO. KARINGANI/NDAGANI/5184

- (i) Dominca Ciakarundu- Life interest
- (ii) Mbare Enos Mbachiani
- (iii) Ejidio Njue
- (iv) Alexander Kinyua Njagi
- (v) Nazarino Njeru Equal share
- (vi) Humprey Njagi
- (vii) Charles Gitonga

(C) L.R. NO. KARINGANI/NDAGANI/5185 - (1.89 acres)

Egidio Njagi - whole

(D) L.R. NO. KARINGANI/NDAGANI/5186 - (1.89 acres)

Mbare Enos Mbachiani - whole

(E) L.R. NO. KARINGANI/NDAGANI/5187 - (1.5 acres)

Alexander Kinyua Njagi - whole

(E) L.R. NO. KARINGANI/NDAGANI/5188& 5189- (1.87 acres)

Humprey Njagi - whole

(G) L.R. KARINGANI/NDAGANI/5190- - (1.50 acres)

Charles Gitonga Mboani - whole

(H) L.R KARINGANI/NDAGANI/5191 - (1.50 acres)

Nazerino Njagi - whole

(I) L.R. NO. KARINGANI/NDAGANI/5192 - (3.9 acres)

Dominica Ciakarundu

Corona Njeri Jointly

I shall make no order as to costs.

Dated, signed and delivered at Chuka this 25th day of October, 2018.

R.K. LIMO

JUDGE

25/10/2018

Judgment signed, dated and delivered in the open court in presence of Murithi for petitioner and Mugo for protestor.

R.K. LIMO

JUDGE

25/10/2018