



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT CHUKA

SUCCESSION CAUSE NO. 57 OF 2016

(FORMERLY MERU HIGH COURT SUCCESSION CAUSE NO. 561 OF 2013)

M'NKANATA M'NJIIMA alias NKANATA NJIEMA- (DECEASED)

AND

GLADYS KAINDA MBAE.....PETITIONER/APPLICANT

VERSUS

FRANCIS KITHINJI NKANATA.....PROTESTOR

J U D G M E N T

1. This cause relates to the estate of the late M'Nkanata M'Njiima (deceased) who died on 21st August, 2012 at Chogoria Hospital domiciled at Magutuni Maara within Tharaka Nithi County. The deceased died intestate leaving the following surviving him namely:-

- (i) Phiris Igoji - (deceased)
- (ii) Pamela Kanyua Nkanata
- (iii) Gladys Kainda Mbae
- (iv) Francis Kithinji
- (v) Jackline Ntue Kaburu
- (vi) Agnes Mwiti Nyaga

2. The following assets comprise the estate of the deceased;

- a) L.R No. Kiera/E. Magutuni/666
- b) L.R. No. Kiera/E. Magutuni/908
- c) L.R No. Kiera/E. Magutuni/1074
- d) L.R. No. Kiera/E.Magutuni/485
- e) Plot No.1708 Lower East Magutuni Adjudication Section
- f) Plot No.1715 Lower East Magutuni Adjudication Section
- g) Plot No. 1779 Lower East Magutuni Adjudication Section
- h) Plot No.1251 Lower East Magutuni Adjudication Section

i) Plot No. 1202 Lower East Magutuni Adjudication Section.

3. The Petitioner herein, Gladys Kainda Mbae was appointed the administratrix of the estate herein on 17th June, 2014 and through summons for confirmation of Grant dated 17th March 2015, she applied for confirmation of the said grant and proposed to have the estate distributed as follows:-

(a) L.R. No. Kiera/East Magutuni/1074 measuring approximately 14.08 acres.

- (i) Gladys Kainda Mbae - 3.52 acres
- (ii) Agnes Mwiti Nyaga - 3.52 acres
- (iii) Jackline Ntue Kaburu - 3.52 acres
- (iv) Pamela Kanyua Nkanata - 3.52 acres

(b) L.R. No. Kiera/East Magutuni/1537 measuring 3.458 acres

- (i) Jackline Ntue Kaburu - 1.725 acres
- (ii) Pamela Kanyua Nkanata - 1.725 acres

(c) L.R. No. Kiera/East Magutuni/908 measuring 22.48 acres

- (i) Gladys Kainda Mbae - 4.45 acres
- (ii) Jackline Ntue Kaburu - 4.45 acres
- (iii) Pamela Kanyua Nkanata - 4.45 acres
- (iv) Francis Kithinji Nkanata - 4.45 acres

(d) L.R. No. Kiera/East Magutuni/485 measuring 31.13 acres

- (i) Gladys Kainda Mbae - 6.23 acres
- (ii) Agnes Mwiti Nyaga - 6.23 acres
- (iii) Jackline Ntue Kaburu - 6.23 acres
- (iv) Pamela Kanyua Nkanata - 6.23 acres
- (v) Francis Kithinji Nkanatha - 6.23 acres

(e) L.R. No. Kiera/East Magutuni/666

- (i) Gladys Kainda Mbae
- (ii) Agnes Mwiti Nyaga
- (iii) Jackline Ntue Kaburu equal share
- (iv) Pamela Kanyua Nkanata
- (v) Francis Kithinji Nkanata

(f) L.R. No. Lower East Magutuni Adjudication Section/1202

- (i) Gladys Kainda Mbae
- (ii) Agnes Mwiti Nyaga
- (iii) Jackline Ntue Kaburu equally
- (iv) Pamela Kanyua Nkanata
- (v) Francis Kithinji Nkanata

(g) L.R. No. Lower East Magutuni Adjudication Section/1251

- (i) Gladys Kainda Mbae
- (ii) Agnes Mwiti Nyaga
- (iii) Jackline Ntue Kaburu equally
- (iv) Pamela Kanyua Nkanata
- (v) Francis Kithinji Nkanata

(h) L.R. No. Lower East Magutuni Adjudication Section 1708

- (i) Gladys Kainda Mbae
- (ii) Agnes Mwiti Nyaga
- (iii) Jackline Ntue Kaburu equal share
- (iv) Pemella Kanyua Nkanata
- (v) Francis Kithinji Nkanata

(i) L.R. No. Lower East Magutuni Adjudication Section 1715

- (i) Gladys K. Mbae
- (ii) Agnes M. Nyaga
- (iii) Jackline N. Kaburu equal share
- (iv) Pemella K. Nkanata
- (v) Francis Kithinji Nkanata

(j) L.R. Lower East Magutuni Adjudication Section 1779

- (i) Gladys K. Mbae
- (ii) Agnes M.Nyaga
- (iii) Jackline N. Kaburu equal share
- (iv) Pamela K. Nkanata

(v) Francis Kithinji Nkanata

3. Francis Kithinji Nkanata, the protestor was not satisfied with the petitioner's proposal above and he filed an affidavit of protest sworn on 16th June, 2015. His main ground of protest is that his siblings are all daughters and are married. He has further deposed that he has developed parcel No. Kiera East Magutuni/1074 where he claims he has a permanent house. He has proposed to have the estate distributed as follows:-

(a) **L.R. No Kiera/East Magutuni/1801.**

- (i) Gladys Kainda Mbae
- (ii) Agnes Mwiti Nyaga
- (iii) Jackline Ntue Kaburu equal share
- (iv) Pamela Kanyua Nkanata

(b) **L.R. No. Kiera/East Magutuni/666**

- (i) Gladys Kainda Mbae
- (ii) Agnes Mwiti Nyaga equally
- (iii) Jackline Ntue Kaburu
- (iv) Pamela Kanyua Nkanata

(c) **L.R. No. Kiera/East Magutuni/1251**

- (i) Gladys Kainda Mbae
- (ii) Agnes Mwiti Nyaga equally
- (iii) Jackline Ntue Kaburu
- (iv) Pamela Kanyua Nkanata

(d) **L.R. No. Kiera/East Magutuni/1074**

- (i) Philis Igoji - 4.08 acres
- (ii) Francis Kithinji Nkanata - 10 acres

(e) **L.R. No. Kiera/East Magutuni/1537**

- (i) Philis Igoji - 0.458 acres
- (ii) Francis Kithinji Nkanata - 3 acres

(f) **L.R. No. Kiera/East Magutuni/908**

- (i) Philis Igoji - 2.48 acres
- (ii) Francis Kithinji Nkanata - 20 acres

(g) **L.R. No. Kiera/East Magutuni/485**

(i) Philis Igoji - 8.38 acres

(ii) Francis Kithinji Nkanata - 20 acres

4. This court has considered both the petitioners proposal and that of the protestor. The protestor's proposal to some extent has been overtaken by the event of death of the widow Philis Igoji Nkanata who died in the course of trial. The provisions of **Section 38** of the **Law of Succession Act** provides that where a deceased dies intestate with no surviving spouse the estate shall be divided equally among the surviving children. In this cause the surviving children are five namely:-

(i) Gladys Kainda Mbae

(ii) Agnes Mwiti Nyaga

(iii) Jackline Ntue Kaburu

iv) Pamela Kanyua Nkanata &

(v) Francis Kithinji Nkanata

5. The protestor's contention that he should be given a bigger share on account of being the only male child to the deceased and the fact that his siblings are all married flies in the face of the law and the constitution. The law of succession Act (Cap 160 Laws of Kenya) does not differentiate children of a deceased person on the basis of sex. Under **Article 27** of the **Constitution of Kenya 2010** discrimination on grounds of sex or marital status is outlawed. The protestors proposal on how the estate should be distributed is discriminatory and untenable in law. As I have observed **Section 38** of **Law of Succession Act** clearly provides that an estate of a deceased person dying intestate without a surviving spouse should be equally divided among the surviving children unless there is a consent from all the beneficiaries on a different mode of distribution. That is the position of the law and this court shall go by the same because this a court of law.

6. In the premises the grant issued to the administratrix on 17th June 2014 is hereby confirmed and all the properties comprising the estate shall be equally divided among the five named children of the deceased as follows:-

(a) **L.R. No. Kiera/East Magutuni/1074**

(i) Gladys Kainda Mbae

(ii) Agnes Mwiti Nyaga

(iii) Jackline Ntue Kaburu equal share

(iv) Pamela Kanyua Nkanata

(v) Francis Kithinji Nkanata

(b) **L.R. No. Kiera/East Magutuni/1537**

(i) Gladys Kainda Mbae

(ii) Agnes Mwiti Nyaga

(iii) Jackline Ntue Kaburu equal share

(iv) Pamela Kanyua Nkanata

(v) Francis Kithinji Nkanata

(c) **L.R. No. Kiera/East Magutuni 908**

(i) Gladys Kainda Mbae

(ii) Agnes Mwiti Nyaga

(iii) Jackline Ntue Kaburu equal share

(iv) Pamela Kanyua Nkanata

(v) Francis Kithinji Nkanata

(d) L.R. No. Kiera/East Magutuni 485

(i) Gladys Kainda Mbae

(ii) Agnes Mwiti Nyaga

(iii) Jackline Ntue Kaburu equal share

(iv) Pamela Kanyua Nkanata

(v) Francis Kithinji Nkanata

(e) L.R. No. Kiera/East Magutuni 666

(i) Gladys Kainda Mbae

(ii) Agnes Mwiti Nyaga

(iii) Jackline Ntue Kaburu equally

(iv) Pamela Kanyua Nkanata

(v) Francis Kithinji Nkanata

(f) L.R. No. Kiera/East Magutuni 1202

(i) Gladys Kainda Mbae

(ii) Agnes Mwiti Nyaga

(iii) Jackline Ntue Kaburu equal share

(iv) Pamela Kanyua Nkanata

(v) Francis Kithinji Nkanata

(g) L.R. No. Kiera/East Magutuni 1251

(i) Gladys Kainda Mbae

(ii) Agnes Mwiti Nyaga

(iii) Jackline Ntue Kaburu equal share

(iv) Pamela Kanyua Nkanata

(v) Francis Kithinji Nkanata

(h) L.R. No. Kiera/East Magutuni 1708

(i) Gladys Kainda Mbae

(ii) Agnes Mwiti Nyaga

(iii) Jackline Ntue Kaburu equal share

(iv) Pamela Kanyua Nkanata

(v) Francis Kithinji Nkanata

(i) **L.R. No. Kiera/East Magutuni 1715**

(i) Gladys Kainda Mbae

(ii) Agnes Mwiti Nyaga

(iii) Jackline Ntue Kaburu equal share

(iv) Pamela Kanyua Nkanata

(v) Francis Kithinji Nkanata

(j) **L.R. No. Kiera/East Magutuni 1779**

(i) Gladys Kainda Mbae

(ii) Agnes Mwiti Nyaga

(iii) Jackline Ntue Kaburu equal share

(iv) Pamela Kanyua Nkanata

(v) Francis Kithinji Nkanata

(k) **L.R. No. Kiera/East Magutuni 1819**

(i) Gladys Kainda Mbae

(ii) Agnes Mwiti Nyaga

(iii) Jackline Ntue Kaburu equal share

(iv) Pamela Kanyua Nkanata

(v) Francis Kithinji Nkanata

This court further directs that the Deputy Registrar do execute requisite documents on behalf of any party who may be reluctant to cooperate and execute documents to facilitate transmission as per the judgment of this court. There shall be no order as to costs because this is a family matter.

Dated, signed and delivered at Chuka this 24th day of October, 2018.

R. K. LIMO

JUDGE

24/10/2018

Judgment signed, dated and delivered in the open court in the presence of Muthoni holding brief for Mugo for petitioner who is present and protestor who is also present.

R.K. LIMO

JUDGE

24/10/2018