



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**FAMILY DIVISION**  
**IN THE MATTER OF THE ESTATE OF M Y (DECEASED)**  
**SUCCESSION CAUSE NO. 1643 OF 2015**  
**RULING**  
**PLEADINGS**

The deceased, **M Y** died on 2<sup>nd</sup> March 2015 intestate.

The Petition herein was filed by **M Y G** and **H W Y** on the 6<sup>th</sup> July 2015 for grant of letters of administration intestate.

She was survived by the following beneficiaries:

- i. M Y G**
- ii. S N Y**
- iii. H W Y**
- iv. A G Y**
- v. T N Y**

Her estate comprised of properties:

- a. LR NO. DAGORETTI/RIRUTA/[Particulars Withheld] (1/2 SHARE)**
- b. LR. NO. RARE/TERET/BLOCK 1/[Particulars Withheld] (1/2 SHARE)**

**M Y G** and **H W Y** were granted the Letters of Administration on 13<sup>th</sup> day of October and filed Summons for Confirmation of grant on 22<sup>nd</sup> April 2016. The matter was fixed for hearing on 15<sup>th</sup> June 2016 and the mode of distribution of the suit properties was proposed to be as follows;

- 1. DAGORETTI/RIRUTA/[Particulars Withheld] ½ SHARE – M Y G and H W Y to hold in trust in equal shares for themselves and S N Y , A G Y and F N .**
- 2. RARE/TERE/BLOCK 1/[Particulars Withheld] ½ SHARE- M Y G H W Y to hold in trust in equal shares for themselves and S N Y , A G Y and F N .**
- 3. H Y and S N Y did not sign written consents to the proposed mode of distribution.**

On 17<sup>th</sup> November 2016, one of the beneficiaries **H K** Swore an **Affidavit of Protest** and stated that she agrees with the mode of distribution proposed in regard to **LR/Rare/Tiret Block 1/[Particulars Withheld]** but with regard to **LR Dagorreti Riruta/[Particulars Withheld]** she stated as follows;

- 1. That the property was comprised in the Estate of Y K M , the husband to the deceased herein under High Court Succession Cause No. 2089 of 1999, Nairobi and produced an annexed copy of the Confirmation of grant marked HK 1.**

2. That at confirmation the property was divided in equal shares between the widows of the 2 houses namely: M N Y and K W Y.
3. That LR Dagoretti/Riruta/**[Particulars Withheld]** was subsequently sub-divided into **LR Dagoretti/Riruta/[Particulars Withheld]** and produced an annexed copy of the Mutation Form marked **HK2**.
4. That all the Portions were transferred by transmission jointly in the names of the widows who were the joint administrators of the Estate of Y K M.
5. That **LR Dagoretti/Riruta/[Particulars Withheld]** is what is due to the house of the deceased herein.
6. She proposed that the properties be shared out to all beneficiaries by a schedule of distribution that she produced.

On 21<sup>st</sup> November 2016, M Y G, one of the beneficiaries swore an Replying Affidavit to the Affidavit of Protest on behalf of S N Y and A G Y and himself and he stated:

- i. That the copy of Certificate of Confirmation of Grant for the estate of Y K M stated to have been annexed in the affidavit of Protest was not availed in the copy served upon his advocate and that he was therefore not able to verify the distribution of the estate as stated.
- ii. That he had not been aware of the Succession Cause No. **2089 of 1999** for the said **Y K M**.
- iii. That he was aware that the two wives of the late Y K M namely M N and K W Y were each entitled to a half share of the parcel of land Dagoretti/Riruta/**[Particulars Withheld]**.
- iv. That the said piece of land is still intact the way the deceased left it and no subdivision has ever been carried out, no beacons planted or measurements done.
- v. That if the same had been done, then each beneficiary should be shown beacons marking the size of their parcel of land.
- vi. That the deceased left behind 5 beneficiaries but the proposed distribution allocates 6 portions and it is not clear who is the 6<sup>th</sup> allottee being given the parcel Dagoretti/Riruta/**[Particulars Withheld]**.
- vii. He prayed that the mode of distribution proposed in the summons for confirmation of grant dated 21.4.2016 be adopted by this Honourable Court as it is fair and each beneficiary gets an equal share.

## **SUBMISSIONS:**

### **APPLICANT**

The applicant averred that the some of the beneficiaries have not consented to the confirmation of the grant issued on 13<sup>th</sup> October 2015. Consequently, the Honourable Court could not confirm the same. The court directed the administrators to hold meetings and come up with the way forward. Further, parties not consenting were directed to file their protest and their mode of distribution.

The protestor filed her affidavit of Protest dated 17<sup>th</sup> November 2016 and Schedule of distribution dated 15<sup>th</sup> November 2016, challenging the above summons for confirmation of grant and the mode of Distribution particularly with respect to **LR DAGORETTI/RIRUTA/[Particulars Withheld]**. On behalf of M Y G and A G Y we filed a Replying Affidavit to the Affidavit of Protest dated 19<sup>th</sup> November 2016 responding to the statements of the protestor.

### **ISSUES**

They canvassed the following issues:

- a. Whether an estate of a deceased person can be a beneficiary in an intestate Succession.
- b. Whether the mode of distribution proposed by the protestor is valid.

They submitted that the said subdivision denies some beneficiaries the opportunity to benefit from the estate equally with others.

They also stated that in the letters of administration granted to the Applicants herein on 13<sup>th</sup> October 2015 all the beneficiaries are meant to benefit equally both from ½ share of **LR Rare/Tiret Block 1/[Particulars Withheld]** and ½ share of **LR Dagoretti/Riruta/[Particulars Withheld]** being the property forming part of the estate available for distribution. Nothing could be fairer, equal, equitable and thus legal than that. If all beneficiaries were to share a portion of the deceased estate equally, then over and above, some or one of them is allowed to reserve some portion out of the estate for an unidentified beneficiary then that is definitely unequal, not equitable and not justified under the provisions of the law guiding intestate succession in Kenya and any mode of distribution seeking to give effect to that inequality is void. The Applicants humbly pray that:

a. The protest be dismissed.

b. That the grant of probate for Letter of Administration intestate made to the applicants in this matter on 13<sup>th</sup> October 2015 be confirmed in the terms proposed in his summons for confirmation dated 21.4.2016.

#### **PROTESTOR:**

On the 18<sup>th</sup> day of April 2017 the protestor filed her written submissions which were grounded on her affidavit of protest sworn on 17<sup>th</sup> November 2016 and the proposed mode of distribution annexed to the affidavit. The protestor agrees with the petitioners that, the estate of the deceased should be shared equally between all the named beneficiaries.

The protest, therefore, has not been about the impropriety of the distribution of the Estate of the deceased as proposed by the petitioners. It is about several facts obtaining on the ground which are within the knowledge of the petitioners and which should have been disclosed in the affidavit in support of the summons for Confirmation of the Grant herein and, therefore, assist the court in the distribution of the estate.

She urged the Court to specifically take care of the interests of these grandchildren including the protestor, most of whom are minors to ensure that they are not disinherited by their step-grandparents who are the beneficiaries herein.

#### **DETERMINATION**

The confirmation of grant proceedings attendant to a polygamous home is by virtue of **Section 40 & 71 of Law of Succession Act Cap 160 as follows;**

**Section 40 (1) Law of Succession Act Cap 160 provides;**

**“Where an intestate has married more than once under any system of law permitting polygamy his personal and household effects and the residue of the net intestate shall in the first instance divided among the houses according to the number of children in each house, but also adding any wife surviving him as an additional unit to the number of children.”**

**Section 40 (2) Law of Succession Act Cap 160 provides;**

**“The distribution of the personal and household effects and the residue of the net intestate estate within each house shall be in accordance with the rules set out in Sections 35 to 38.”**

**Section 71 of Law of Succession Act provides;**

**“...provided in cases of intestacy, the grant of letters of administration shall not be confirmed until the Court is satisfied as to the respective identities and shares of all persons beneficially entitled; and when confirmed the grant shall specify all such persons and their respective shares.”**

Therefore, from the summons of Confirmation of grant filed on 22<sup>nd</sup> April 2015 the beneficiaries are children of the deceased M Y (deceased) one of the widows of Y K M whose estate was distributed in **Succession Cause no 2089 of 1999** and the suit property **L.R.Dagoretti/Riruta/[Particulars Withheld]** was divided into equal parts; K W Y and her children and M Y (deceased) and her children. The ½ share of L.R. Dagoretti is available for distribution to her children jointly and equally.

The Protest is dismissed.

#### **DISPOSITION**

- 1. Whether the ½ share of suit property L.R.Dagoretti/Riruta/[Particulars Withheld] was subdivided as alleged by Protestor or not, it shall be shared/distributed equally between the children of the deceased M Y in this matter; jointly and equally.**
- 2. The grandchildren shall obtain their beneficial interest from the parent(s) child/children of the deceased.**
- 3. The alleged subdivision is not agreed or acknowledged by all beneficiaries/children of the deceased just as the summons for confirmation mode of distribution was not consented to by all beneficiaries.**
- 4. The summons for confirmation of grant shall/is confirmed in the following terms;**
  - a. Dagoretti/Riruta/[Particulars Withheld] ½ share shall be distributed equally between M Y G and H W Y (administrators) and S N Y , A G Y and F N .**
  - b. RARE/TERE/BLOCK 1/[Particulars Withheld] ½ SHARE- shall be distributed equally between M Y G, H W Y (administrators) and S N Y , A G Y and F N .**

**DELIVERED DATED & SIGNED IN OPEN COURT ON 24<sup>TH</sup> OCTOBER 2018.**

**M. W. MUIGAI**

**JUDGE –FAMILY DIVISION OF HIGH COURT**

**IN THE PRESENCE OF:-**

**NGATA KAMAU ADVOCATE FOR PROTESTOR**

**L.N. MUCHIRA ADVOCATE FOR APPLICANTS**