



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

SUCCESSION CAUSE NO. 261 OF 2003

IN THE MATTER OF THE ESTATE OF GILBERT KIRINGO RUKARIA (DECEASED)

GEDIEL KIRIMI KIRINGO.....PETITIONER

-V-

MARTHA NKATHA.....1ST OBJECTOR

FAITH KAGWIRIA.....2ND OBJECTOR

LUCY NKIROTE.....3RD OBJECTOR

AND

WILLIAM MWENDA.....PROTESTOR

J U D G M E N T

1. **Gilbert Kiringo Rukaria (“the deceased”)** died on 25th November 2002. He left the following surviving him: -

- a) **Jacob Murira Kiringo**
- b) **Susan Mukomunene**
- c) **John Mwirigi Kiringo**
- d) **Jennifer Mukami Mugambi**
- e) **William Menda Kiringo**
- f) **Gediel Kirimi Kiringo**
- g) **Mary Nkatha Kiringo.**
- h) **Stephen Murerwa Kiringo**
- i) **Jane Kendi Kirinya**

2. By Summons for Confirmation of Grant dated 17th August 2015, the petitioner sought to distribute the estate of the deceased in terms of the supporting affidavit.

3. His proposed mode of distribution was met by a protest by the objectors. The gist of their protest was that the same was discriminatory, that they were dependants of the deceased yet the petitioner had proposed to distribute to their mother 1 acre only. That plot No. 20 Kinoru Market G and K had been bequeathed to their mother by their grandfather in his lifetime, to cater for their school fees and general upkeep

4. They contended that the 1st objector was a daughter of the deceased while the 2nd and 3rd objector were children of the 1st objector. That the 2nd and 3rd objector were born and brought up by the deceased on the property known as **NYAKI /KITHOKA /1909**. That the deceased left them living on that property which they had extensively developed. That the 1st objector was physically challenged, a condition which the petitioner was exploiting to his advantage.

5. On his part, the protestor contended that he was the husband of Susan Ikunyua, a daughter of the deceased. That she died on 16th December, 2005. That before his demise, the deceased had given her parcel number **Nyaki/Kithoka/1911** as a gift for which he and his wife paid KShs.100,000/-.

6. In response to the objectors, the petitioner contended that his late father had settled him and his brothers on their respective distinct parcels of land in the 1980's. That they had built their respective homes in the said parcels where they were residing to-date.

7. When the matter came up for hearing on 25th September 2018, the court directed that the objection and protest be determined by way of written submissions. In their submissions, the objectors reiterated the contents of their affidavit of protest and submitted that when the 2nd and 3rd protestors were born, it was the deceased who took them under his wing and took care of them. That they had never known any other home other than **LR NO. Nyaki/Kithoka 1909**. It was further submitted that **Plot No. 20 Kinoru market door No. G and K** had been bequeathed to the 1st objector by the deceased during his lifetime.

8. The petitioner reiterated his averments that the proposed distribution was in accordance with the wishes of the deceased. That the 2nd and 3rd protestors have no right to claim over and above what their mother had been allocated.

9. On his part, the protestor submitted that the deceased had given **Land Parcel No. Nyaki/Kithoka/1911** to his daughter Susan Ikunyua (deceased). That the daughter had paid a he goat in the sum of Kshs.100,000/= under Kimeru customary law. That the proposed distribution was discriminative of the daughters of the deceased. He urged that **Land Parcel No. Nyaki/Kithoka/1913** be distributed to him on behalf of the estate of his wife, the late Susan Ikunyua.

10. I have carefully considered the proposed modes of distribution by the parties. The objectors' case was that, their mother (the 1st objector) was of unsound mind and had never been married. That she had been under the sole care of their grandfather till his demise. It was their further evidence that they were brought up by their grandfather on **LR NO. Nyaki/Kithoka 1909** where they had remained to-date. That **plot No. 20 Kinoru Market G & K** had been bequeathed to their mother for their upkeep.

11. The evidence of the objectors was never controverted or challenged. The response was that the clan had met and distributed the estate. That in the said distribution, the 1st objector was allocated **LR No. Nyaki/Kithoka/1910** where a house would be built for her.

12. The petitioner's further contention was that the deceased had settled him and his brothers in their respective parcels where they had built their homes in the 1980s. He never gave the specific details when and on what parcels the alleged settlement was done. With regard to **Plot No. 20 Kinoru**, he contended that the same belonged to Jacob Muriira Kiringo. I note however that, despite that averment, he had distributed the entire of plot No. 20 including doors G.K to all his brothers and promised to be paying some maintenance to the 1st objector.

13. To my mind, the 2nd and 3rd objector were dependants of the deceased under **section 29 of the Law of Succession Act, Cap 160 of the Laws of Kenya ("the Act")**. This is so because they had depended on him and his land throughout their life up to the time of his demise.

14. Due to the condition of their mother, the 1st objector, I will appoint them her guardian *ad litem* and they will hold whatever share is given to them jointly for their and her benefit. Since the deceased did not leave any spouse, his estate should be distributed in accordance with **section 38 of the Act**. The same provides: -

"Where an intestate has left a surviving child or children but no spouse the net estate shall subject to the provisions of Section 41 and 42 devolve upon the surviving child, if there be only one or shall be equally divided among the surviving children."

15. ***In re Estate of Maritim Chepkwony Chumo (Deceased) [2018] eKLR*** Mumbi J held: -

"The total estate of the deceased comprises 3.7 ha or 9.1429 acres. Each of the beneficiaries is therefore entitled to approximately 1.523 acres. I have noted the proposal by the protestor that the estate should be distributed equally, which is what the law requires in circumstances such as are before the court. However, I do not believe that equal distribution of the estate of a deceased person requires that each of the beneficiaries gets a slice out of each of the assets of the deceased. In the circumstances, I am satisfied that the mode of distribution proposed by the petitioner in his written submissions will result in a reasonable and fair distribution of the estate of the deceased."

16. In this regard, all that is required is not that each beneficiary gets a share in each property but for the court to try as far as it can, to effect equality in the distribution of the estate to the beneficiaries. In this regard, while effecting the distribution, I will bear in mind the following: -

a) the physical challenges of the 1st objector;

b) the 2nd and 3rd objectors' case that they were born, brought up by the deceased and continue to live on **LR NO. NYAKI/KITHOKA 1909** which they have developed;

c) that **Plot No. 20 Kinoru Market door G and K** had been bequeathed to the 1st objector by the deceased in his lifetime for her and the 2nd and 3rd objectors' upkeep;

d) that the evidence of the objectors' in their claim was largely not controverted;

e) that Susan Ikunyua died after the demise of the deceased. That she therefore left behind an estate which includes a share in the estate;

f) That her estate has not been succeeded and there is therefore no personal representative to her estate;

g) that most of the beneficiaries had not challenged the proposed distribution of the estate by the petitioner;

h) that I should not disturb the proposed distribution by the petitioner except when and where it is extremely necessary to strike the equality under the law.

17. Apart from the foregoing, I have further taken into consideration other matters including; that the estate consists of both agricultural and commercial properties; that Susan M. Ikunyua died in 2005 and no one has taken any letters of administration in respect of her estate, that Stephen Ikunyua is just a husband and not the administrator of her estate. That the agricultural land measures **11.308 ha**, which may suggest a share of approximately 1.256 ha per beneficiary. Although the total beneficiaries are nine, I will also consider the 2nd and 3rd objectors' dependency. The value of the two commercial properties, namely, **Kinoru Plot No. 20 and Plot No. 13A, B and C Kienderu Market**, is unknown. That there are monies held by NLC which amount was not disclosed to the court. Nevertheless, the principle of equality under Section 38 of the Act will apply.

18. In the circumstances, the estate of the deceased will be distributed as follows: -

a) Jacob Mulira Kiringo

- Nyaki/Kithoka/1906 (2.22 Ha) - Whole

- Kinoru Plot No. 20 (J & H)

b) William Mwenda Kiringo

- Nyaki/Kithoka/1907 (2.06 Ha) - Whole

- Kienderu Plot 13 C

- Kinoru Plot No. 20 (A & B)

c) Gediel Kirimi Kiringo

- Nyaki/Kithoka/1908 (2.06 Ha) - Whole

- Ntima/Igoki/4283 (0. 108 Ha) - Whole

- Kinoru Plot No. 20 (F and the Kiosks behind)

d) Faith Kagwiria & Lucy Nkirote for their one benefit and that of Mary Nkatha Kiringo

- Nyaki/Kithoka/1909 (2.34 Ha) - Whole

- Kinoru Plot No. 20 (K)

e) Stephen Murwerwa Kiringo

- Nyaki/Kithoka/1910 (0.405 Ha) -Whole

- Nyaki/Munithu/445 - 1.30 ha

- Nyaki/Kithoka/1913 (0.82 Ha) -Whole

- Kenderu Plot No. 13 A

- Kinoru Plot No. 20 (E)

f) Estate of the late Susan Mukomunene Ikunyua

- Nyaki/Kithoka/1911 (0.405 Ha) - Whole

- Nyaki/Kithoka/429 (0.40 Ha) - Whole

- Kinoru Plot No. 20 (J)

g) Jane Kendi Kiriinya

- Nyaki/Kithoka/1912 (0.405Ha) - Whole

- Ntima/Igoki/4284 (0.100 Ha) - Whole

- Kinoru Plot No. 20 (E & G)

h) John Mwirigi Kiringo

- Nyaki/Kithoka/2364 (2.023 Ha) - Whole

- Kinoru Plot No. 20 (C & D)

- Kienderu Plot No. 13 B

i) Jennifer Mukami Mugambi

- Nyaki/Munithu/445 - 1 ha

- Kinoru Plot No. 20 (I)

j) All the monies from the National Land Commission to be shared amongst all the beneficiaries equally.

19. This being a succession matter there will be no order as to costs.

DATED and DELIVERED at Meru this 29th day of November, 2018.

A. MABEYA

JUDGE