



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT CHUKA

MISC. SUCCESSION CAUSE NO. 6 OF 2017

IN THE MATTER OF THE ESTATE OF THE LATE M'BUNDI M'ARIMI - (DECEASED)

EUGENIO MBAE NJAGI.....APPLICANT

VERSUS

ANDRIANO NKONGE NJAGI.....RESPONDENT

J U D G M E N T

1. This cause relates to the estate of **M'BUNDI M'ARIMI** who died intestate on the 2nd October, 2001 leaving behind the following dependants surviving him;

- (i) Eugenio Mbae Njagi
- (ii) Andriano Nkonge Njagi
- (iii) Wilfred Gitonga Njagi
- (iv) Godfrey Gitari Njagi
- (v) Cisto Ndiga Njagi
- (vi) Gilbert Kinyua Njagi
- (vii) Anisilas Kimathi Njagi
- (viii) David Mutembei Njagi

2. The properties comprising the estate in this cause are as follows:

- a) Muthambi/Upper Karimba/701
- b) Muthambi/Upper Karimba/34
- c) Karingani/Mariani/4709
- d) Karingani/Mariani/11
- e) Karingani/Mariani/489
- f) Kajuki/Kamutiria/473
- g) Plot No. 12A at Kajuki Market

3. Eugenio Mbae Njagi and Andriano Nkonge Njagi were appointed joint administrators by consent of the beneficiaries in this court on 29th November, 2017 and on 6th February, 2018, Andriano Nkonge Njagi vide Summons for Confirmation of Grant dated 6th February, 2018

applied for confirmation of grant and gave a proposal under paragraph 5 of his affidavit in support of the confirmation sworn on 5th February 2018. The proposal made is as follows:

(A) Muthambi/Upper Karimba/701

The second administrator proposed that the property be divided equally among all the 8 children.

(B) L.R Muthambi/Upper Karimba/34

Wilfred Gitonga - whole (0.9 acres)

(C) L.R. Karingani/Mariani/4709

(i) Acquilina Karima Kaburu - 1.25 acres

(ii) Eugenio Mbae Njagi - 0.75 acres

(ii) Mary Mukwanyaga Njagi - 1.25 acres

(iv) Gilbert Kinyua Njagi - 0.375 acres

(v) Godfrey Gitari Njagi - 0.375 acres

(D) L.R. Karingani/Marimanti/11

(i) Andriano Nkonge Njagi - whole (1 acre)

(E) L.R. Karingani/Mariani/489

(i) Mary Mukwanyaga Njagi - whole (0.65 acres)

(F) L.R. Kajuki/Kamutiria/423

(i) Aquilina Karimi Kaburu

(ii) Cisto Ndiga Njagi

(iii) Godfrey Gitari Njagi Jointly

(iv) Wilfred Gitonga Njagi

(G) Plot No. 12A Kajuki Market

(i) David Mutembei Njagi - whole

4. The 1st administrator, Eugenio Mbae Njagi disagreed and filed a protest on the above proposal stating that the 2nd administrator had not listed all the properties and beneficiaries and that on that basis the grant should not be confirmed. However interestingly the protestor did not give any details of what properties comprising the estate were left out or which beneficiaries were left out. This court gave both the 2nd administrator (Andriano Nkonge Njagi) and the protestor chance to put in submissions but it is only the 2nd administrator who filed his written submissions. The protestor for unknown reasons failed to put in any submissions to justify his protest.

5. An estate of a deceased person dying intestate with no surviving spouse but with surviving child or children is distributed in accordance with the provisions of **Section 38 of Law of Succession Act** which provides that an estate should be distributed equally among the surviving children. I have considered the proposal made by the 2nd administrator under paragraph 5 of his affidavit in support of confirmation of grant and find that the proposal is to a large extent equitable and fair to all the beneficiaries. I do not find any basis for the protest raised by the protestor herein. He has not named the alleged beneficiaries locked out by the 2nd administrator. He has also failed to give details of the properties that comprise the estate that were left out by the proposed mode of distribution under paragraph 5 of the affidavit in support of the application for confirmation.

In the premises, this court finds no merit in the protest filed.

The grant issued on 29th November, 2017 is hereby confirmed as per paragraph 5 of the affidavit sworn on 5th February 2018 in support of Summons for Confirmation of Grant. This court further makes no order as to costs as this is a family matter.

Dated, signed and delivered at Chuka this 29th day of November, 2018.

R.K. LIMO

JUDGE

29/11/2018

Judgment signed, dated and delivered in open court in the presence of Mutani for Applicant and Mugo holding brief for Murithi for protestor.

R.K.LIMO

JUDGE