



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

SUCCESSION CAUSE NO. 16 OF 2011

IN THE MATTER OF THE ESTATE OF M'NDETHIU MUBEA (DCD)

ERASTUS KIAMBATI.....PETITIONER

VERSUS

FAITH NDUMBA.....PROTESTOR

RULING

Letters of Administration to the estate of the Late M'Ndethiu Mubea who died on 6th April 2004 which domiciled in Kibirichia was made to Erastus Kiambati Nkando on 19th May 2011 and when he applied for confirmation and distribution of the grant by application dated 9th May 2012 consent was signed by 6 out of 14 beneficiaries.

In the Supporting Affidavit the Administration proposed to distribute the entire property of the estate as follows:

- 1) Erastus Kiambati 1.15 acres
- 2) Starlings Mburugu 1.15 acres
- 3) Gladys Ntimi 1.15 acres
- 4) Murungi Jackson 1.15 acres
- 5) Marrion Gakii 1.15 acres

More beneficiaries were not provided for no explanation was offered.

In affidavit sworn on 8th October 2012 the Administrator complains that some of the beneficiaries had refused to sign consent to distribution.

By an affidavit sworn on 30th April 2013, Faith Ndumba protested against the Administrators mode of distribution.

She identified beneficiaries and dependants of the deceased as follows:

1st House

- 1) Gladys Ntimi Ndethiu
- 2) Starlings Mburugu
- 3) Murugi Jackson
- 4) Margret Mwari
- 5) Grace Kathure

6) Monica Ntibuka

2nd House

- a) Marrion Gakii - Widow
- b) Faith Ndumba - Daughter
- c) Mary Nkirote - Daughter
- d) Fridah Kinya - Daughter
- e) Stephen Ntiritu - Son
- f) Phillis Karwitha - Daugher

From the 2nd house the Administrator gave the widow 1.15 acre and left out the 4 daughters and one son our of the distribution.

In the 1st house Margret Mwari, Grace Kathure and Monica Ntibuka were also left out of the distribution.

Protest was served on Administration and by a letter dated 7th May 2013 he sought the court to give him directions.

Gladys Ntimi, Margret Mwari and Jackson Murugu were on 24th March 2017 served with hearing notice on behalf of themselves and other beneficiaries to appear in court on 5th April 2017 and on due date he appeared.

The Chief of Kiamiogo Location testified that eh Administrator was son to the deceased person's brother but was brought up by the deceased according to the elders because his father died long time ago. The clan said he didn't know if Erastus had led in Ntumburi because it was not in his jurisdiction.

The protestor and her mother said deceased their father and husband respectively died in 2004.

The protestor said that her mother had 6 daughters and one died - Mercy Nkirote and left a child namely Jackline Karimi. The said Erastus Kiambati Nkando is not entitled to benefit from their father's land. They said that they were not aware that Erastus Nkando had petitioned for letters of Administration and when he came to get their signatures so that land could be divided they refused.

They proposed that the estate be distributed equally.

They said that there was a plot at Kibirichia which had 3 rooms and it was Gladys Ntimi who was collecting rent from the plot measuring 25 x 100 ft.

Protestor said that when deceased died her mother was stopped from collecting rent. Protestor said the one day Murugu's wife beat the widow to the deceased. She said she was also cut one day when children from 1st house were cutting trees.

She said there was an assault case pending in court against Esther Murugu the daughter in law to the deceased. She said Ester and Lydia Nguta are their cousins and not children of the deceased.

Marion Gakii said Erastus Nkando was son to her husband's father known as Kiambati.

She said Erastus didn't consult her when distributing land and she was just told to occupy land on the lower side of estate. She said the deceased gave Erastus led in Ntumburi and that Erastus sold the land and then came to occupy their land. She said Erastus stays in Nanyuki. She said the one acre Erastus distributed to himself he gave to her son.

The widow said that the plot in Kibirichia belongs to her co-wife's brother and she used to collect rent from it before her husband died. She said Lydia Nguta is grand daughter of deceased from the 1st house.

The petitioner didn't respond to the protest and didn't appear despite numerous summons being served on her. This leave the court to conclude that what the protestor and her mother as well as chief said is true that he was not a son to the deceased but either a nephew or brother as stated by protestor and her witnesses and therefore couldn't have priority to bring a petition for Letters of Administration to the estate herein. It is Marion Gakii the surviving widow of the deceased who ought to have taken out Letters of Administration by her consent or anyone of the deceased person's children. This court in those circumstances do revoke grant made to Erastus Kiambati and applicant's.

Marion Gakii and Faith Ndumba as Administrators of the estate.

It also follows that Erastus Kiambati should not benefit from the deceased person's estate. The protestor daughter to the deceased the widow and the said Erastus had been given land by the deceased and he sold it. He didn't controvert this allegation. If it true that he had allocated

the said once acre out of the estate the said son should vacate.

The widow of the deceased clarified that plot at Kibirichia belonged to her co-wife's brother as and therefore it doesn't form part of his estate.

L.R. No. Kibirichia/735 measures 5.75 acres.

Considering that Lydia Nguta and Erastua Kiambati Nkando are not deceased person's children, we have the deceased person survived by one widow and 11 children after one daughter of Marion Gakii died.

The estate should therefore be distributed to 12 dependants/beneficiaries.

I do order that sons of the deceased get half an acre each that is:

1) Starling Mburungu	0.75 acres
2) Murugu Jackson	0.75 acres
3) Stephen Niritu	0.75 acres
Total	2.25 acres

The balance of 3.50 acres to be shared equally among the daughters of the deceased including the surviving child of one the deceased daughters that is"

1) Gladys Ntimi	0.35 acres
2) Margaret Mwari	0.35 acres
3) Grace Kathure	0.35 acres
4) Monica Ntibuka	0.35 acres
5) Marion Gakii	0.35 acres
6) Faith Ndumba	0.35 acres
7) Mary Nkirote	0.35 acres
8) Fridah Kinya	0.35 acres
9) Phylis Karwitha	0.35 acres

10) Mercy Nkrote Deceased – Daughter, Jackline Karimi 0.35 acres to be held in trust by Faith Ndumba and Marion Gakii until she attains age of majority.

There shall be no orders as to costs.

HON. A. ONG'INJO

JUDGE

RULING SIGNED, DELIVERED AND DATED THIS 22ND DAY OF NOVEMBER, 2018

IN THE PRESENCE OF:

C/A – Kinoti

Mrs. Ntarangwi Advocate H/B for Kaimenyi for Protestor

Petitioner – Present in person

Protestor – Present in person.

HON. A. ONG'INJO

JUDGE

22/11/2018