



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT CHUKA

MISC. SUCCESSION CAUSE NO. 19 OF 2016

(FORMERLY SPM CHUKA SUCCESSION CAUSE NO. 56 OF 2004)

IN THE MATTER OF THE ESTATE OF THE LATE M'NJAU RUFUS M'IMWITHA alias NJAU RUFUS (DECEASED)

DAVID NJERU MUKURU.....1ST ADMINISTRATOR/PROTESTOR

VERSUS

HALIMA CIAMBAKA RAJAB.....2ND ADMINISTRATRIX/APPLICANT

J U D G M E N T

1. This cause relates to the estate of the late M'Njau Rufus M'Imwita (deceased) who died on 6th April 2001 at Chuka Hospital resident at Mugwe Location. According to the petition for letters of administration filed, the deceased died intestate and left the following dependants surviving him;

- a. Halima Ciambaka Rajab- widow
- b. Jane Ciangithi Nyaga - widow
- c. Phineas Mwenda Mukuru
- d. Kenneth Kaunda Mukuru
- e. Catherine Ithiru Mugambi
- f. Dinah Kainyu Nanua
- g. Lucy Kangai David
- h. Francis Murithi Nyaga
- i. Gitari Mukuru M'Imwitha

The only property listed as comprising the estate is that property known as L.R Karingani/Mugirirwa/65.

2. The petitioner in this cause Gitari Mukuru M'Imwitha was appointed the administrator of the estate of the deceased herein on 29th November, 2004. Later the grant was revoked and a fresh grant issued to Halima Ciambaka Rajab and David Njeru Mukuru on 31st January, 2017.

3. The first administratrix Halima Ciambaka Rajab through Summons for Confirmation of Grant dated 15th June, 2017 applied for confirmation of grant and averred that the deceased was married to two wives namely;

- (i) Jane Ciangithi Nyaga - 1st wife (house) and
- (ii) Halima Ciambaka Rajab - 2nd wife (house)

She further listed children of both houses as follows:-

(a) Jane Ciangithi Nyaga (deceased)

- (i) Gitari Mukuru M'Mwita
- (ii) Muthoni Mukuru
- (iii) David Njeru Mukuru
- (iv) Mugambi Mukuru (deceased) - widow Catherine Mugambi
- (v) Martin Mukuru (deceased)- widow Kainyu Martin.
- (vi) Kenneth Kaunda Mukuru
- (vii) Phineas Mwenda Mukuru
- (viii) Murangiri Ikingi Mukuru
- (ix) Kageni Mukuru
- (x) Karimi Mukuru

b) Halima Ciambaka Rajab

- (i) Zainabu Kageni
- (ii) Hamisi Rajab
- (iii) Maulidi Hamisi
- (iv) Juma Hamisi
- (v) Hamza Nasir
- (vi) Rashid Rajab
- (vii) Zuhura Nasir

4. The 1st administratrix has vide her affidavit in support of Summons for Confirmation of Grant proposed to have the estate distributed as follows:-

L.R. No. Karingani/Mugirirwa/65.

- (i) David Njeru Mukuru to hold for himself and all the children from the 1st house - 6.9 acres
- (ii) Halima Ciambaka Rajab to hold 5.053 acres for herself and all the children in the 2nd house.

5. The 2nd administrator, David Njeru was displeased with the above proposal and filed a protest. His main bone of contention is that the 1st administratrix has included children or dependants who are unknown to him and save for Zuhura Kendi he has contended that all the other seven children were not dependants of the deceased.

6. The 2nd administratrix has deposed in his affidavit sworn on 16th October, 2017 that the deceased had only set aside 2 acres for his wives and the rest of the land was meant for eight sons. He has further deposed that the 1st administratrix benefitted from the sales of parcels numbers Karingani/Mariani/1015, 4540, 4539 and 4599.

7. The 2nd administrator has given the following proposal in the distribution of the estate of deceased.

L.R Karingani/Mugirirwa/65

- (i) Catherine Muthoni - 1.061 acres
- (ii) Mary Njeri - 1.061 acres
- (iii) Gitari Mukuru - 1.061 acres
- (iv) Dorothy Kageni - 1.061 acres
- (v) Dinah Kainyu - 1.061 acres

(to hold in trust for Susan Makena and Betty Karendi)

- (vi) Kenneth Kaunda Mukuru - 1.061 acres
- (vii) Catherine Itheru Mugambi - 1.061 acres

(to hold in trust for Annjoy Kawira and Francis Macharia)

- (viii) David Njeru - 1.061 acres
- (ix) Phineas Mwenda Mukuru - 1.061 acres
- (x) Mercy Karimi - 1.061 acres
- (xi) Patrick Murangiri Mukuru - 1.061 acres
- (xii) Francis Murithi (grandson) - 1.061 acres
- (xiii) Zuhura Kendi - 1.061 acres
- (xiv) Halima Ciambaka Rajab - Nil

8. At the oral hearing of the protest filed, the 1st administratrix started that she got married to the deceased in 1980 and reiterated that all her children belong to the deceased as he educated them. She further added that they resided with the deceased at the mosque before moving to his estate where a house was put up for her and 2 acres carved out where she eked out a living. She added that the 2nd administrator David Njeru and Mugambi Mukuru were unhappy when she was taken to the estate and conspired and murdered the deceased. She however added that David Njeru was later released while Mugambi died in custody. She spoke of threats from the 2nd administrator and other children from 1st house she stated which forced her to abandon her matrimonial home for her own safety. She asked this court to distribute the estate and give her 2 acres. She conceded in cross-examination that she did not have birth certificate of her children but added that all the children from the 1st house got 1.5 acres while she was given only 2 acres by the deceased. She added that she got married to the deceased when she already had her children but added that the children were educated by the deceased.

9. The 2nd administrator David Njeru testified and conceded that his late father the deceased herein was murdered and that he was charged with the murder together with Mugambi. He however added that he was later released for lack of evidence. He also conceded that prior to the demise of his father he had given each child from the 1st house 1.1 acres while he reserved 2 acres for himself and his 2 wives. According to him Halima the 1st administratrix can only stake claim on the one acre.

10. Benard Nthiiri Rufus (DW2) testified that the deceased was his brother and confirmed that he was murdered but did not know who had murdered him. He further told this court that the deceased was married to 2 wives and that Halima was married but did not get any child with the deceased. He however added that she came with a small child named Zuhura Kendi who was brought up by the deceased.

11. The court has considered the evidence tendered in this cause. It is apparent from the evidence tendered that the deceased in this cause unfortunately appeared to have been killed owing to matrimonial disputes. This court noted from the evidence tendered in court that even at present there is no love lost between the children from the 1st house and the 2nd wife - Halima Ciambaka Rajab. The law **Section 35** provides that where a deceased person dies intestate his net estate should be divided equally among the children with the surviving spouse having life interest in the estate. Where an intestate was polygamous, the provisions of **Section 40** provides that the estate of deceased

person should be divided equally among the houses according to the number of children in each house adding any wife surviving him as an additional unit. In this case there is no dispute that the deceased died intestate and was polygamous. It is evident from the evidence tendered that the 1st administratrix was the 2nd wife and was married when she already had her own children. It is however evident that Zuhura Kendi was brought up by the deceased and therefore qualifies to be a dependant within the meaning of **Section 29(b) of Law of Succession Act**. This fact is conceded by the protestor and was supported by the brother of the deceased (Benard Nthiiri Rufus - DW2). This court therefore finds that only Halima Ciambaka Rajab and Zuhura Kendi from the 2nd house are entitled to share in the estate. There was no evidence tendered to show that the deceased took care of the other children from the 2nd house as his own. On the same note there was no evidence tendered to show that he took care of one Francis Murithi who is alleged by the 2nd administrator as a grandson of the deceased.

12. In the premises, and in view of the provisions of **Section 40 of Law of Succession Act** the grant issued on 31st January, 2017 is hereby confirmed as per the following mode of distribution;

L.R. Karingani/Mugirirwa/65

- (i) Catherine Muthoni - 1.061 acres
- (ii) Mary Njeri - 1.061 acres
- (ii) Dorothy Kageni - 1.061 acres
- (iii) Gitari Mukuru - 1.061 acres
- (iv) Dinah Kainyu - 1.061 acres to hold in trust for Susan Makena & Betty Karendi
- (vii) Kenneth Kaunda Mukuru - 1.061 acres
- (viii) Catherine Itheru Mugambi - 1.061 acres to hold in trust for Annjoy Kawira and Francis Macharia
- (ix) Phineas Mwenda Mukuru - 1.061 acres
- (x) Mercy Karimi - 1.061 acres
- (xi) Patrick Murangiri Mukuru - 1.061 acres
- (xii) Halima Ciambaka Rajab
- (xiii) Zuhura Kendi - 2.12 acres jointly

I shall make no order as to costs but in view of the animosity between the 1st administratrix and the children of the first house, I direct that the County Surveyor in the company of police officers from Chuka Police Station do visit the estate and carry out subdivisions as per the certificate of confirmation to be issued and the Deputy Registrar is directed to execute transfer forms of those parties who are not going to cooperate to facilitate transmission of the estate to the beneficiaries herein. The costs of the surveyor shall be paid by both administrators.

Dated, signed and delivered at Chuka this 20th day of December, 2018.

R.K. LIMO

JUDGE

20/12/2018

Judgment signed, dated and delivered in the open court in presence of the petitioner and protestor.

R.K. LIMO

JUDGE

20/12/2018