



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

SUCCESSION CAUSE NO. 255 OF 2010

IN THE MATTER OF THE ESTATE OF M'IMPWI M'IKIUGU (DECEASED)

MOSES GITUMA IMPWIAPPLICANT

VS

BEATRICE NKATHA M'IMPWI.....PETITIONER

JUDGMENT

1. M'IMPWI M'IKIUGU (“the deceased”) to whom this Succession Cause relates, died on 11th July, 2008. The petitioner petitioned for letters of administration in Maua Succession Cause No. 1 of 2009 and Chuka Succession Cause No. 164 of 2008 where in the letter of introduction by the chief stated that the deceased was survived by:

- a. Beatrice Nkatha M'Impwi - Wife
- b. Lucy Kiende Impwi - Daughter Married
- c. Grace Mwari M'Impwi - Daughter Married
- d. Catherine Mukiri Domisiano - Daughter Married
- e. Moses Gituma - Son

2. In Maua Succession Cause No. 1 of 2009 she listed A/C No. 0140101430119 Equity bank Meru Branch as the only asset. On 6th January 2009 the petitioner was issued with limited grant of letters of administration for the purpose of operating the bank account. Thereafter, she was issued with the grant of letters of administration intestate on the same day. While in Chuka Succession Cause No. 164 of 2008 she added L. R. No. ABOTHUGUCHI/KARIENE/916 as the other asset. She was issued with grant letters of administration intestate which were confirmed on 5th August 2009.

3. The applicant filed summons dated 25th March 2013 for revocation of the grants pursuant to **Section 76 and 47 of CAP 160 Laws of Kenya**. On 2nd December 2015 this court revoked the grants issued in cause No. 1 of 2009 (Maua) and No. 964 of 2008 (Chuka) for they did not have jurisdiction to issue the grants over the estate which was above Kshs. 100,000/-. It also appointed the objector and petitioner as joint administrators of the estate.

4. On the issue of distribution the applicant told the court that he and his mother live on land parcel No. 916. Catherine, Lucy and Grace are all married and live on their husband's land at the time of the deceased's death. His sisters are the ones pushing their mother who has mental problems in order to take all the deceased's properties for by the time the deceased died he had not distributed any land to them. But the deceased had called the clan who he told about his distribution of which was recorded in writing. He claimed that the deceased bequeathed all his estate to him as his only son except he said that should his sisters have any problem they should see him or their mother.

5. The deceased had a case in court on land numbers Abothuguchi/Kariene/2490 and 2491 of which when the cases ended the deceased took both lands. However, the deceased told him to sell No. 2490 in order to cater for the expenses of the cases of which he sold it in 2010 for Kshs. 600,000/- and not Kshs. 4 million. The money paid the debt of the advocate that was owed for about 12 years and he used the balance to build.

6. Since he has two wives the deceased told him that one wife should live on land parcel No. 916 and the other on parcel No. 2490. At the

time of the deceased's death he was on land parcel No. 916 where there is coffee which he planted himself according to where the deceased had showed him; he claimed the deceased wanted him to give him the land. He has planted eucalyptus, bananas, trees, yams and has cows on the land and has connected water. His mother has planted maize for the coffee that was planted by the deceased was destroyed by pests. He has no problem with the petitioner giving her one acre to his sisters.

ANALYSIS AND DETERMINATION

7. In distribution of the estate of a deceased person, the court must first establish the estate property and the rightful beneficiaries of the estate.

Beneficiaries

8. The deceased was survived by a spouse and four children, three daughters and one son. They are:

- a. **Beatrice Nkatha M'Impwi - Widow**
- b. **Lucy Kiende Impwi - Daughter**
- c. **Grace Mwari M'Impwi - Daughter**
- d. **Catherine Mukiri Domisiano - Daughter; and**
- e. **Moses Gituma - Son**

Estate property

9. With reference to the assets, it is not in dispute that the deceased has an Equity Bank account at Meru branch and is the owner of L. R. No. ABOTHUGUCHI/KARIENE/916. Concerning land ABOTHUGUCHI/KARIENE/2490 AND NO. 2491 the petitioner claimed that these parcels belonged to the deceased. However, the applicant stated that parcel No. 2490 was used to pay off the expenses that arose from cases in relation to the two land parcels and the balance of the monies he used to build. With regard to No. 2491 he said it was given to him by the deceased. Both lands were transferred to him by the deceased before he died. However, from the green cards produced it shows that it is parcel No. 2491 that was sold and not No. 2490.

10. It is not in dispute that the deceased transferred the two parcels of land to the applicant. The applicant alleges one was used to set off expenses. From the green card it shows that the parcel No. 2490 was part of Succession No. 17 of 2002. The applicant has not provided any proof to show that this asset was used to set off the expenses. He is the one alleging that the money was used to pay the advocate but has not provided this court with any proof to ascertain this for instance a receipt which is normally given by advocates once you pay them or even an affidavit from the advocate confirming this. Hence, this court cannot rely on the assertions made by the applicant for they are unsupported. What is on record shows that the parcels of land belonged to the deceased and were transferred to him. These are the estate property of the deceased to wit; L. R. No. ABOTHUGUCHI/KARIENE/916, LR NO. ABOTHUGUCHI/KARIENE/2490 AND LR NO. 2491 and Equity bank account.

Distribution

11. Now, how should the estate of the deceased be distributed? In distributing the estate of the deceased, this court has to take into account certain circumstances before making such an order. **Section 28 (1) of the Law of Succession Act** stipulates that:

“In considering whether any order should be made under this Part, and if so what order, the court shall have regard to—

- (a) the nature and amount of the deceased's property;**
- (b) any past, present or future capital or income from any source of the defendant;**
- (c) the existing and future means and needs of the dependant;**
- (d) whether the deceased had made any advancement or other gift to the dependant during his lifetime; [emphasis added]**
- (e) the conduct of the dependant in relation to the deceased;**
- (f) the situation and circumstances of the deceased's other dependants and the beneficiaries under any will;**
- (g) the general circumstances of the case, including, so far as can be ascertained, the testator's reasons for not making provision for the dependant.”**

12. The deceased has left behind a spouse and children. Therefore. **Section 35 of the Law of Succession Act** applies. However, awarding the spouse a life interest in the whole residue of the net intestate estate would curtail the right of the beneficiaries to enjoy their inheritances.

Such clog may not be desirable especially in situations where the beneficiaries are grown up and some or all with families. See the decision of the Court of Appeal in the case of Stephen Gitonga M'murithi v Faith Ngira Murithi [2015] eKLR

“As for the issue of the widow having been given an outright tangible shareholding in the net intestate estate of the deceased as opposed to a life interest, we find nothing in section 40 of the Laws of Succession Act that can prevent a court of law from looking at the peculiar circumstances of each case and then determine whether to apply strictly the rule on life interest or temper with it in the interests of justice to all the affected parties. In the circumstances of this case having found that the principle in section 38 was the appropriate applicable principle, ordering a life interest would have occasioned injustice to all the dependants as opting for such an option would have only bestowed upon the widow Naomi a hovering interest over the individual interests of all the other beneficiaries thereby making it impossible for all the beneficiaries to enjoy freely the resulting benefits from the deceased’s estate. We find it was prudent for the learned trial Judge to accord a direct unencumbered benefit to the widow Naomi as opposed to a life interest.”

13. Accordingly, I take the view that the each beneficiary should get a share in accordance with the principle of equality amongst all. The said principle is grounded in the Constitution as well as the Law of Succession Act which provides for equality, equity and justice regardless of gender, sex, status, religion or creed of the beneficiary. And more specifically, the Constitution loathes all forms of discrimination of any person on the basis of one or more of the grounds set out in article 27 of the Constitution. Accordingly, it does not matter whether the daughters are married or not or are comfortable or not in their marriages; they are entitled to a share of their father’s estate just like the sons. They do not have a lesser claim of right as compared to sons for they are all equal; not all of a particular gender but all.

14. The applicant stated that the deceased had distributed his estate to him alone but if the daughters need a share they should bring it to his attention or their mother. I am again constrained to state that even the retired Constitution in **Section 82** protected persons against discrimination. This kind of discrimination of daughters is prohibited discrimination.

15. From the scene visit report relating to L. R. No. Abothuguchi/Kariene/916 Beatrice does not stay on the land for she vacated soon after the demise of the deceased but she occasionally comes to work on the land. It was affirmed that the applicant’s wife and her off springs have been in occupation of the land for over 5 years. There are two main buildings on the compound one stone walled and the other semi-permanent timber house. The applicant declared that he is the one who constructed these buildings.

16. Apart from being in occupation of the said land, the applicant declared that his other family is located on land No. 2491. It has been established that this land belongs to the deceased therefore, the fact that the applicant has settled his families on two lands does not mean that the rightful beneficiaries are to be disinherited by such selfish and patriarchal tendencies. I will however put into consideration the investment he has made on the property. The estate consists of the following land parcels L. R. No. ABOTHUGUCHI/KARIENE/916, ABOTHUGUCHI/KARIENE/2490 AND NO. 2491 measuring 1.114 Ha, 0.411Ha and 0.411 Ha respectively bringing the total acreage to 1.936 Ha. Since they are five beneficiaries the total acreage will be divided amongst five, which means that each person is entitled to roughly about 0.3872 Ha.

17. Therefore, from the foregoing I make the following orders:

a. L. R. No. ABOTHUGUCHI/KARIENE/916, ABOTHUGUCHI/KARIENE/2490 AND NO. 2491 to revert back to the name of the deceased.

b. The following assets to be distributed as follows:

Monies in A/C No.*** Equity bank Meru Branch to be shared equally amongst:-**

- i. Beatrice Nkatha M’Impwi - Widow**
- ii. Lucy Kiende Impwi - Daughter**
- iii. Grace Mwari M’Impwi - Daughter**
- iv. Catherine Mukiri Domisiano -Daughter; and**
- v. Moses Gituma - Son**

L. R. No. ABOTHUGUCHI/KARIENE/916 to be shared equally amongst:-

- i. Beatrice Nkatha M’Impwi - Widow**
- ii. Lucy Kiende Impwi - Daughter**
- iii. Grace Mwari M’Impwi - Daughter**
- iv. Catherine Mukiri Domisiano - Daughter; and**
- v. Moses Gituma - Son**

L. R. No. ABOTHUGUCHI/KARIENE/2490 to be shared equally amongst:-

- i. Beatrice Nkatha M'Impwi - Widow
- ii. Lucy Kiende Impwi - Daughter
- iii. Grace Mwari M'Impwi - Daughter
- iv. Catherine Mukiri Domisiano - Daughter; and
- v. Moses Gituma - Son

L.R. No. ABOTHUGUCHI/KARIENE/NO. 2491 to be shared equally amongst:-

- a. Beatrice Nkatha M'Impwi - Widow
- b. Lucy Kiende Impwi - Daughter
- c. Grace Mwari M'Impwi - Daughter
- d. Catherine Mukiri Domisiano -Daughter; and
- e. Moses Gituma - Son

c. Beatrice Nkatha M'Impwi shall file before this court an account of how she has spent or utilized the money in the A/C No. 0140101430119 Equity bank Meru Branch.

d. The grant herein is confirmed on the foregoing terms. As this is a succession case involving close family members I order each party to bear own costs. It is so ordered.

Dated, signed and delivered in open court at Meru this 19th day of December, 2018

F. GIKONYO

JUDGE

In presence

Kirimi for M/S Soy for objector

Petitioner in person – present.

F. GIKONYO

JUDGE