



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT CHUKA

MISC. SUCCESSION CAUSE NO. 6 OF 2018

(FORMERLY CHUKA SUCC. CAUSE NO. 184 OF 2011)

IN THE MATTER OF THE ESTATE OF IBIUKU KIENYENYU (DECEASED)

EMILIO MICHENI NDURU.....1ST ADMINISTRATOR

MUKINDIA IBIUKU.....2ND ADMINISTRATOR

J U D G M E N T

1. This cause relates to the Estate of the late **IBIUKU KIENYENYU** who died on 22nd April, 1978 and according to the petition for letters of administration filed herein, he died intestate leaving the following surviving him namely:-

- (i) Augustine Gitari Karunguru
- (ii) Mukindia Ibiuku
- (iii) M'Arimi Ibiuku
- (iv) Mutabe Ibiuku- (deceased) and
- (v) Nyamu Ibiuku

2. The property comprising the estate in this cause is that property known as L.R. Karingani/Muiru/33. This court on 13th June 2018 appointed Mukindia Ibiuku as the administrator of the estate of the deceased in this cause. The appointed administrator has moved this court through Summons for Confirmation of Grant dated 14th September, 2018 for confirmation of grant in terms of the following mode of distribution.

L.R. Karingani/Muiru/33

- a) Mati Karunguru- 0.79 acres
- b) Emmanuel Micheni Nyaga- 0.79 acres
- c) Augustino Gitari Karunguru - 0.79 acres
- d) Japhet Nyaga Ediel - 0.79 acres
- e) Mukindia Ibiuku
- Florence Ciakathia - 0.79 acres equally
- Janerosa Nyamu

3. One of the beneficiaries, Emilio Micheni Nduru on the other hand filed his own proposed mode of distribution as follows:-

L.R.Karingani/Muiru/33

- a) Mukindia Ibiuku -
- b) Emilio Micheni Ndura
- c) Patrick Murithi
- d) Japhet Gitonga -1.97 acres jointly
- e) Kellen Kangai
- f) Asunta Karimi

4. This court on 1st October, 2018 upon fixing the Summons for Confirmation of Grant dated 14th September, 2018 for hearing on 15th October, 2018 gave parties in this cause time to file protest if there was any that was not agreeable to the proposed mode of distribution suggested by the appointed administrator and fixed the Summons for Confirmation of Grant for hearing on 15th October, 2018. On 15th October 2018, none of the parties in this cause was present and noting the age of this cause, this court find it necessary to fix the matter for judgment.

5. This court finds that Emilio Micheni Nduru has filed a proposal on how the estate of the deceased should be distributed. He describes himself as the 2nd administrator which is misleading because as I have observed above this court appointed Mukindia Ibiuku sole administrator of the estate of the deceased herein on 13th June, 2018. This court does not find any justification on the proposed mode of distribution by the said Emilio Micheni Nduru. His capacity in this cause is also not well explained because in some instances he describes himself as son of the deceased herein like in the affidavit sworn on 16th October, 2018 while in the affidavit sworn on 9th March 2018 he describes himself as the son of the administrator herein. If he is a son of the petitioner/administrator herein, then he has no right to object to the proposed mode of distribution suggested by his father unless he can prove that the deceased took care of him prior to his demise in 1975 and therefore qualifies on his own right to claim as a dependant independent from the claim by the administrator and his father. There is no such evidence before this court.

6. This court finds the estate of the deceased herein should be distributed in accordance with **Section 38** of the **Law of Succession Act**. The suggested mode by the administrator under paragraph 4 caters for all the beneficiaries equally and is therefore lawful and justified.

In the premises, the grant issued by this court on 13th June, 2018 is hereby confirmed in terms of paragraph 4 of the affidavit in support sworn by Mukindia Ibiuku on 21st September, 2018. I make no order as to costs.

Dated, signed and delivered at Chuka this 18th day of December, 2018.

R.K. LIMO

JUDGE

18/12/2018

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

R.K. LIMO

JUDGE

18/12/2018