



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT CHUKA**

**SUCCESSION CAUSE NO. 390 OF 2015**

**(FORMERLY SUCCESSION CAUSE NO.292 OF 2012)**

**IN THE MATTER OF THE ESTATE OF THE LATE M'MBIUKI M'RINDIRI (DECEASED)**

**AND**

**SILAS MIRITI MBIUKI.....PETITIONER**

**VERSUS**

**SARAH MUTHONI.....1<sup>ST</sup> PROTESTOR**

**WANJA MBIUKI.....2<sup>ND</sup> PROTESTOR**

**DEBORAH KARENDI.....3<sup>RD</sup> PROTESTOR**

**J U D G M E N T**

1. This cause relates to the estate of the late **M'MBURIA M'NDIRI** (deceased) who died on 10<sup>th</sup> September 2003 at Chogoria Hospital domiciled at Mugumango Tharaka Nithi County. He died intestate leaving the following dependants surviving him namely:-

- (i) Silas Miriti Mbiuki
- (ii) Dorothy Igoji (deceased)
- (iii) Abel Mbae Mbiuki
- (iv) Gedion Mugambi Mbiuki
- (v) Sarah Muthoni
- (vi) Wanja Mbiuki
- (vii) Lawrence Kithinji Mbiuki
- (viii) Deborah Karendi

2. The properties forming the estate of the deceased in this cause are;

- (i) L.R. Muthambi/U.Karimba/58
- (ii) L.R. Mwimbi/S. Mugumango/610 &
- (iii) L.R Muthambi/U.Karimba/353

3. The Petitioner herein, Silas Miriti Mbiuki, was appointed the administrator of the estate of the deceased herein on 29<sup>th</sup> October, 2012 and issued with a grant of letters of administration, on 22<sup>nd</sup> November, 2016. He moved this court for confirmation of the said grant giving the following proposal on how the estate should be distributed.

**a) L.R Muthambi/U.Karimba/58- 3.4 ha**

- (i) Silas Miriti Mbiuki - 0.77 ha
- (ii) Lawrence Kithinji Mbiuki - 0.93 ha
- (iii) Abel Mbae Mbiuki - 0.85 ha
- (iv) Gedion Mugambi Mbiuki - 0.40 ha

**b) L.R. Muthambi/U.Karimba/353 - 0.6 ha**

Falidis Murithi Silas - whole

**c) L.R. Mwimbi/S. Mugumango/610 - 0.89 ha**

- (i) Gedion Mugambi Mbiuki - 0.40 ha
- (ii) Abel Mbae Mbiuki - 0.23 ha
- (iii) Silas Miriti Mbiuki - 0.26 ha

4. The above proposal met stiff resistance from Sarah Muthoni who swore an affidavit of protest on her own behalf and Wanja Mbiuki and Deborah Karendi. The main bone of contention was that the proposal made was neither equal nor equitable. The protestor deposed that the daughters of the deceased had been discriminated and proposed that the sons of the deceased be given 2 acres each out of parcel No.Muthambi/U.Karimba/58 while the daughters be given 2.5 acres to share. She also proposed that Gedion Mugambi Mbiuki be given the whole of L.R. Mwimbi/S.Mugumango/610.

5. The protest herein was heard before this court and it transpired that the children of the deceased had disagreed over an issue they ought to have agreed on because the bone of contention was fair distribution of the estate. All the children of the deceased recognize one another and so it is fairly a straight forward case. The deceased died intestate with no surviving spouse. He had 8 children one of whom is deceased. All parties are in agreement that one Falidis Murithi Silas should be considered as a dependant as he is a grandchild of the deceased herein. In view of the apparent disagreement on the question of distribution, this court is left with no other option but to apply the relevant law under **Section 38 of Law of Succession Act** which provide that where a deceased dies intestate with no surviving spouse, the estate should be divided equally among the surviving children. The estate herein comprise the following properties namely:-

(a) L.R. Muthambi/U.Karimba/353 - 1.5 acres

(b) L.R. Muthambi/U.Karimba/58 - 8.5 acres

(c) L.R. Muthambi/S. Mugumango/610- 2.2 acres

**Total 12.2 acres**

The parties are in consensus that Muthambi/U.Karimba/353 should go to Falidis Murithi Silas which leave around 10.7 acres available for distribution among the 7 children meaning that each dependant is entitled to a share of 1.52 acres.

6. In the premises this court hereby confirms the grant issued to Silas Miriti Mbiuki on 29<sup>th</sup> October, 2012 on the following mode of distribution.

**(a) L.R. No. Muthambi/U.Karimba/58**

- (1) Silas Miriti Mbiuki - 1.52 acres
- (2) Abel Mbae Mbiuki - 1.52 acres
- (3) Lawrence Kithinji Mbiuki - 1.52 acres
- (4) Sarah Muthoni

Deborah Karendi - 4 acres jointly

Wanja Mbiuki

(b) **L.R. Muthambi/U.Karimba/353**

Falidi Murithi Silas - whole

(c) **L.R. Mwimbi/S. Mugumango/610**

(i) Gedion Mugambi Mbiuki - 1.52 acres

(ii) Sarah Muthoni

Deborah Karendi - 0.68 acres jointly

Wanja Mbiuki

I shall make no order as to costs as this is a family matter.

**Dated, signed and delivered at Chuka this 18<sup>th</sup> day of December, 2018.**

**R.K. LIMO**

**JUDGE**

**18/12/2018**

Judgment signed, dated and delivered in the presence of protestors and the petitioner.

**R.K. LIMO**

**JUDGE**

**18/12/2018**