



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

SUCCESSION CAUSE NO. 739 OF 2011

In The Matter Of The Estate Of The Late Mumiria Rimbere Alias Mume Rimbere (Deceased)

ZIPPORAH MUMIRIA.....1ST PETITIONER

ROSE KENDI.....2ND PETITIONER

VS

SILAS MURITU RIMBERE.....1ST INTERESTED PARTY

SAMUEL G. RIMBERE.....2ND INTERESTED PARTY

JUDGMENT

1. **MUMIRIA RIMBERE (“the deceased”)** to whom this Succession Cause relates, died on 5th December, 2007. The Chief’s letter of introduction dated 31st December 2011 listed the following to be the deceased’s beneficiaries:

- a. Ziporah Mumiria - Widow
- b. Rose Kendi - Daughter
- c. Catherine Karinthoni - Daughter
- d. Damaris Karwitha - Daughter
- e. Sammy Mwiti - Son
- f. Caroline Gakii - Daughter
- g. Nancy Nkirote - Daughter
- h. Douglas Mutua Mumiria - Son
- i. Nathan Mwirigi Mumiria - Son

And his asset comprising of land Reg. No. NYAKI/MUNITHUI/385 (hereinafter “**the estate property**”).

2. On 18th July, 2012 grant letters of administration were issued to the petitioners. Thereafter, the petitioners filed an application dated 7th February 2013 for confirmation of grant. But, a protest was filed through an affidavit sworn by Samuel Gikundi Rimbere on 16th May 2013, the interested parties. The protestors also filed their proposal on distribution. He deposed that the deceased though registered as the proprietor of the estate the property was not the exclusive owner of the said land. According to the protestor, the land was family land but held by the deceased held in trust for them.

3. He averred that, prior to their father’s demise he had already shown each of them where to utilize and took possession, developed and utilized their respective positions. They denied that they have alternative parcels of land since the estate is what their father left to the deceased and themselves as inheritance. Before the deceased’s demise they had various family meetings of which the 1st petitioner was part of and where this issue was deliberated and resolved. It was their father’s wishes that the said land be divided into three equal portions.

4. This was opposed vide the further affidavit in support of the application for confirmation of grant of the 1st petitioner sworn on 27th May, 2013. She affirmed that the Suit Land belonged to the deceased and not her father-in-law. She stated that the deceased allowed the interested parties to live and utilize a small portion of the land with an understanding that they had only been given a place to build. The land cannot be shared equally between the deceased and interested parties for the rightful beneficiaries are herself and her children. Besides, there were no family meetings as alleged.

5. Before the matter proceeded vide *viva voce* evidence, on 11th June 2014 the 1st interested party said that the protest is deemed withdrawn and that he gets 1 acre. **OW1 Samuel Gikundi** reiterated what he had earlier stated in his affidavit. He declared that he and Silas get one acre respectively and the balance to go to the petitioner. **OW2 Daniel** affirmed that he knows the objectors as well as the petitioners. That there was a meeting, but there were no females who attended. When they were called by the objectors they were all already on the land. They heard their dispute which they took before the chief. **OW3 Gerrand Naragwi** testified that there was a time the deceased called them and told them that he wanted the objectors to raise money so that he can share the land to them. They failed to raise the money immediately and the deceased died before sharing the said land. He ascertained that they were all shown where to stay and each has their respective boundaries.

ANALYSIS AND DETERMINATION

6. From the application, affidavits, evidence on record, the issue that emerges for determination is *how the estate is to be distributed*.

7. In determining distribution of the estate, two matters beg for immediate resolution. Firstly, what comprises of the estate, and secondly who are the dependants or beneficiaries of the estate. There is no dispute that the estate of the deceased comprises of the estate property. The squirm is on dependants. **Section 29 of the Law of Succession Act** states that:

For the purposes of this Part, "dependant" means—

(a) the wife or wives, or former wife or wives, and the children of the deceased whether or not maintained by the deceased immediately prior to his death;

(b) such of the deceased's parents, step-parents, grand-parents, grandchildren, step-children, children whom the deceased had taken into his family as his own, brothers and sisters, and half-brothers and half-sisters, as were being maintained by the deceased immediately prior to his death; and

(c) where the deceased was a woman, her husband if he was being maintained by her immediately prior to the date of her death.

8. The interested parties are brothers of the deceased. They claimed that the estate belonged to their father who gave it to the deceased to hold in trust for them. As a result they are entitled to a share of it as it is family land despite the title is registered under the name of the deceased as of 12th August 1970. In the case of **In re Estate of Alice Mumbua Mutua (Deceased) [2017] eKLR** W. Musyoka J stated as follows:

“It may be argued that the subject land is estate property and by dint of that fact the probate court would have jurisdiction thereon. The position is not as simple. The Law of Succession Act, and the Rules made thereunder, are designed in such a way that they confer jurisdiction to the probate court with respect to determining the assets of the deceased, the survivors of the deceased and the persons with beneficial interest, and finally distribution of the assets amongst the survivors and the persons beneficially interested. The function of the probate court in the circumstances would be to facilitate collection and preservation of the estate, identification of survivors and beneficiaries, and distribution of the assets.

...

The primary mandate of the probate court is distribution of the estate and once an order is made distributing the estate, the court's work would be complete. The proposition therefore is that not every dispute over property of a dead person ought to be pushed to the probate court. The interventions by that court are limited to what I have stated above.”

Applying the test above, the subject being raised by the protestors would permit the court a limited jurisdiction of determining the estate property. It may not competently determine the claim that the land is family land. I will proceed on that basis.

9. Of relevance to these proceedings is that, from the evidence adduced before this court it has been established that the interested parties live on the estate where they have developed. The 1st interested party claimed one acre based on what was recorded in court on 11th June 2014. But, by the replying affidavit of Silas Muritu Rimbere sworn on 15th April 2016 the interested parties deposed that the Suit Land be shared as follows: Samuel Gikundi and Silas Muritu Rimbere 1 ½ Acres each and Zipporah Mumiria balance. The 1st petitioner declared in her affidavit that the interested parties are only dependants of the estate to the extent of the portions they had been shown to build and are so entitled.

10. The court order of 12th July 2016 directed among other orders that the county surveyor should visit the Suit Land together with the executive officer and file a report on actual placement of each party on the ground. The executive officer in his report dated 9th March 2017 stated that the Suit Land is divided into three portions occupied by Silas, Zipporah and Samuel Gikundi. The county surveyor in his report dated 11th May 2017 stated that the land is held as follows:

(i) Samuel Gikunda - 0.30 Ha

(ii) Zipporah Mumira - 1.2 Ha

(iii) Silas Muritu - 0.75Ha

11. The executive officer declared that the portions are clearly marked out and each person has developed and utilizes their own portions. However, Zipporah's and Silas' portions are intertwined at the entrance in that Zipporah's coffee bushes hinder Silas from proper access to the road.

12. From the foregoing, it is apparent that the interested parties are entitled to a share as they had been allocated their portion by the deceased. This fact has not been disputed by the 1st petitioner. The only item that seemed to be in dispute is the acreage which has been clarified by the reports filed by the surveyor. The actual land occupied by each party on the ground is now quantified and confirmed. Hence, I find that the interested parties are beneficiaries of the estate to the extent of the portions they hold and occupy. The share allocated to Zipporah this now forms part of the estate deceased and ought to be distributed to her and her children. She recognized the need of equality and equity amongst her children. That is commendable. See her mode of distribution.

a.) As a result of the findings foregoing, I make the followings orders:

1. The estate comprising of land parcel No. NYAKI/MUNITHUI/385 be distributed as follows:

2. Samuel Gikunda – 0.30 Ha

3. Silas Muritu – 0.75 Ha

Share of 1.2 Ha thereof shall be shared equally amongst:

4. Zipporah Mumiria

5. Rose Kendi

5. Catherine Karinthoni

6. Damaris Karwitha

7. Sammy Mwiti

8. Nancy Nkirote

9. Douglas Mutua Mumiria

10. Nathan Mwirigi Mumiria

11. Caroline Gakii

b.) Appropriate access road to be provided to the portion allocated to Silas Muritu.

c.) Grant confirmed in the foregoing terms. No order as to costs.

Dated Signed and delivered in open Court at Meru this 17th Day of December, 2018

F. GIKONYO

JUDGE

In presence of -:

Mrs. Ntarangwi for petitioner

Both Interested parties in person – present

F. GIKONYO

JUDGE