



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MERU**

**SUCCESSION CAUSE NO. 194 OF 2005**

**IN THE MATTER OF THE ESTATE OF NAFTALI M'THAMANGU**

**PETER MUNGATHA.....PETITIONER**

**VERSUS**

**TABITHA NKATHA.....OBJECTOR**

**DOREEN MUTHONI THIMANGU.....APPLICANT**

**JUDGEMENT**

[1] The Deceased *Naftaly M' Thimangu M'Imathiu* died on 29<sup>TH</sup> March 1996. Peter Nangithia petitioned for letters of administration of the estate on 12<sup>th</sup> May 2005 with the consent of some of the family members as the sole administrator.

[2] On 13<sup>th</sup> May 2005 Limited letters of Administration for the Collection of Rent in Plot Numbers BII/186 within Meru Municipality and Plot 9 Kianjai Market to hold in trust for the family was issued to the petitioner herein.

[3] However, the objector herein through an affidavit Dated 16<sup>th</sup> June 2005 objected the collecting of rental income by the petitioner. She also claimed the petitioner did not list all the properties of the deceased and all the survivors of the deceased. She averred that there is a subsisting grant issued to her in Succession Cause No. 61 of 1998.

[4] On 26<sup>th</sup> January 2006 parties filed a Consent granting the limited letters of administration to the Surviving wives of the deceased i.e. Tabitha Nkatha, Gladys Kinanu and Rael Gita. The consent was adopted as an Order of the Court on 30<sup>th</sup> January 2016 by Sitati J.

[5] Apparently, as per the witness statement of the objector dated 6<sup>th</sup> October 2017 the deceased left the following dependants; **1<sup>st</sup> wife- NkueneThimangu (deceased) had one child Peter Nangithia, 2<sup>nd</sup> Wife- Rael Gaita(deceased) had four children; Alice Nkirote, KabuiThimangu, Damaris Nkatha, Robert Thimangu,3<sup>rd</sup> Wife-Elizabeth Karogi (deceased) had 7 children; Julius Miriti, Kenneth Kithinji, Zipporah Kairuthi, MichaelinaNkio, Lucy Gatumwa, Lydia Karambu, Mutuathimangu ( deceased)4<sup>th</sup> Wife-Tabitha Nkatha has five children; Nelly Kagwiria, Newton Mwiti, Patrick Murerwa, CarolynKinya, Christine Gatwiri and the 5<sup>th</sup> Wife- Gladys Kinanu (deceased)Doreen Muthoni, Rita Kendi, KanaroThimangu**

[6] The deceased also had a vast estate comprising the following;

- i. ½ (half) block BII/186-Meru Municipality,
- ii. Plot No. 9- Kianjai Market
- iii. Meru North L.r.No. Kianjai/Mituntu 37 4.9 Ha,
- iv. L.R.Thau/Mumui/22 3.4 Ha
- v. L.r. Uringu Part IAdj Section Plot No. 2812 5.2 Acres
- vi. L.r. Uringu Part I Plot No.1785 3.4 Acres

vii. L.R. Uringi Part I Plot No.795 3.32 Acres

viii. L.R. Uringu Part III Plot No. 763 2.53 Acres

ix. L.r. Uringu Part II Plot No.1023 8.23 Acres

x. Plot at Kirindine 20 points

[7] Doreen Muthoni Thimangu, filed an application on 19<sup>th</sup> March 2010 praying to substitute Gladys Kanana Thimangu as co-administrator of the estate. By Consent of the Parties she was appointed as such on 7<sup>th</sup> December 2010. On the same day letters of Administration were issued to Tabitha Nkatha, Rael Gaiti and Doreen Muthoni Thimangu.

[8] The objector presented the current status of the Properties and averred that she resides in Plot No. 795 and that is her matrimonial Home. She claimed that in Block II/186 Meru Municipality she developed it with the deceased and that's where she gets her proceeds hence the same should be divided to her and Doreen.

[9] As for L.R. Uringu Part II Plot No. 1023 8.23 Acres she claims she went to the tribunal and was issued the said plot, hence. it should go to her son, Nelson Mwiti. She however did not present the proceedings of the Tribunal Case. She averred that the Ruiru Parcel 12 acres is occupied by David Kinoti and Rael Gaita. Keneth and Julius Miriti occupy 11 acres at Uringu. Mbeti Farm 8 ½ acres is occupied by Newton (objectors son) and objector after winning land case against Gladys Kanani.

[10] She previously claimed that the deceased had filed a case against the Gladys Kanani Inoti In Civil Suit No. 31 of 1996 Naftaly Thimangu M'Imatu versus Galdys Kinanu Kinoti claiming that Gladys deceived the deceased into getting a ½ share in Meru Block II/186 when they were cohabiting in the year 1982 to 1990. It equally claimed that Gladys Kanani took advantage of the deceased's ill health due to alcoholism; this had diminished intelligence and caused loss of memory.

#### **Applicant claims joint ownership**

[11] These averments of the objector were rebutted by the applicant who presented a title to Plot No 1023 and averred that her mother, Gladys Kanani Inoti were joint Tenants in Block II/186 Meru Municipality. She also presented a title to this effect.

#### **Confirmation**

[12] The petitioner filed Summons Confirmation of Grant dated 22<sup>nd</sup> July 2013 and listed 21 dependants. He also proposed preferred mode of distribution. The Objector also Proposed her mode of Distribution vide affidavit dated 27<sup>th</sup> August 2013.

[13] Parties are in Agreement that Plot No9 Kianjai Market Should be shared by all parties. Except, they presented conflicting modes of distribution as hereunder;

The petitioner proposed:-

#### **PLOT NO. BII/ 166 MERU MUNICIPALITY MEASURING 25FT BY 15 FEET TO BE SHARED BY**

**I. Gladys Kananau M'thimangu**

**II. Peter NnagithiaThimangu**

**III. Julius MirirtiThIMANGU**

**IV. David KinotiThimangu**

**V. Tabitha NkathaThimangu**

**VI. KenethKithinjiThimangu- Half share Thereof**

#### **PLOT NO. 9 KIANJAI MARKET to be shared by all family members**

#### **L.R. NO. THAU/ MUMUI/22 MEASURING 3.41 HA ( APPROX. 8 ACRES) TO BE SHARED BY**

**(i) Peter NangithiaThimangu- 2 acres**

**(ii) Patrick MurerwaThimangu- 3 acres**

**(iii) David KinotiThimangu- 2 acres**

(iv) Julius MiritiThimangu- 1 acre

L.R. NO. KIANJAI MITUNTU MEASURING 4.9 HA to be shared by NangithiaThimangu and David KinotiThimangu Equally

L.R. NO URINGU PART 1 785 MEASURING 3.32 ACRES to be inherited by NewtomThimangu Whole.

L.R. URINGU PART 1 PLOT NO. 2812 MEASURING 5.2 ACRES to be inherited by Julius MiritiThimangu whole.

L.R. URINGU PART 1 PLOT NO. 1785 MEASURING 3.4 ACRES to be inherited by jULIUSMiritiThimangu WHOLE

L.R. URINGU PART III PLOT NO.766 MEASURING 2.53 to be inherited by KenethKithingiThimangu-whole

L.R. URINGU PART II MEASURING 8.2 ACRES to be shared by Doreen MuthoniThimangu& Rita KendiThimangu- Whole share

[14] The objectors proposed:-

PLOT NO. II/186 MERU MUNICIPALITY

Tabitha ½ Front Side

Doreen Muthoni ½ Back side.

PLOT NO 9 KIANJAI MARKET To be shared Equally

PLOT NO. 3288 To Be shared equally

L.R. NO. THAU/ MUMUI/22 APPROX 3.4 HA ( in equal shares)

(i) Newton MWITI

(ii) Patrick Murerwa

L.R. KIANJAI/MITUNTU/37 APPROX 4.9 HA in equal shares

(i) Peter Nangithia

(ii) David Kinoti

(iii) AliiceNkirote

(Iv) Damaris Nkatha

L.R. URINGU PARTI PLOT NO. 2822 APPROX 5.2 ACRES AND L.R. PART I PLOT NO. 1785 APPROX 3.4 ACRES (IN EQUAL SHARES)

(i) Julius Miriti

(ii) Kenneth Kithinji

(iii) Zipporah Kaituthi

(iv) MachelinoNkio

(v) Lucy Gatumwa

(Vi) LydiaKarambu

L.R. NO. URINGU PART III PLOT NO. 766 APPROX 2,53 ACRES

(i) Kenneth Kithinji

**L.R. URINGU PART II PLOT NO. 7795 APPROX 3.32 ACRES**

**Tabitha NkathaThimangu**

**L.R. URINGU PART II PLOT NO 1023 APPROX 8.2 ACRES ( IN Equal Shares)**

**(i) Doreen Muthoni**

**(ii) Rita Kendi**

**(iii) CarolyneKinya**

**(iv) Christine Gatwiri**

**Applicant's proposal**

**i. Kianjai Plot in equal Shares**

**LAND PARCEL NUMBER URINGU II/ 2812**

**i. Julius MirirtiThimangu**

**ii. Kenneth Kithinji**

**iii. Zipporah Kairuthi**

**iv. Machelino Niko**

**v. Lucy Gatwiri**

**vi. Lydia KarambuThimangu**

**L.R. KIANJAI/ MITUNTU/37**

**(i) Peter NangithiaThimangu**

**(ii) David KinotiThimangu**

**ii. Alice NkiroteThimangu**

**iii. Damaris NkathatThimangu**

**L.R. URINGU III /766**

**(i) Kenneth KithinjiThimangu**

**L.R Uringu II/795**

**(i) Newton Thimangu- Son of the Objector**

**L.R. URINGU II/1785**

**(i) Julius MiritiThimangu**

**(ii) Kenneth KithinjiThimangu**

**iv. ZipporrahKairuthiThimangu**

**v. MachelinoNkioTHimangu**

**vi. Lucy GatumwaThimangu**

**vii. Lydia Kanambithimangu**

Claims PLOT NO.3288 not part of the estate.

PLOT NO, MERU MUNICIPALITY BLOCK II/186 claims the mother has a share hence she ought to be granted  $\frac{1}{2}$  of the share and the rest goes to the estate.

LAND PARCEL THAU/MUMUI/22

i. Peter Nangithiathimangu – 2 acres

ii. Patrick MurerwaThimangu- 3 acres

iii. David Kinoti Thimangu-2 acres

iv. Julius Miriti THimangu-1 acre

LAND PARCEL URINGU II/1023 claims property was owned by her mother Gladys KinanuInoti hence not part of the estate Attached title Certificate that shows that he same bears her name issued on 15.8.2018

#### Distribution of the Estate

[15] The identity of the rightful beneficiaries of the estate is not in doubt. The deceased died intestate and was polygamous. He left behind numerous children. Distribution of his estate should therefore be guided by Section 40 of the Law of Succession Act that Provides;

**40. (1) Where an intestate has married more than once under any system of law permitting polygamy, his personal and household effects and the residue of the net intestate estate shall, in the first instance, be divided among the houses according to the number of children in each house, but also adding any wife surviving him as an additional unit to the number of children.**

**(2) The distribution of the personal and household effects and the residue of the net intestate estate within each house shall then be in accordance with the rules set out in sections 35 to 38.**

[16] The court has not been told of any minors. I shall move on the presumption that the children of the deceased are all of the age of majority. Nonetheless, in case there is a minor, a resulting trust will ensue therewith.

[17] As for PLOT NO. BII/ 166 MERU MUNICIPALITY, the title clearly shows that the late Gladys Kanini was a joint tenant with the deceased. Both tenants are now deceased and it is only fair that the estate of Gladys Kanini should get half a share of the premises. The other half shall be distributed to the rest of the members of the family.

[18] I have also perused the proposed mode of distribution and I have considered the witness statements and Submissions of the parties I have come to the conclusion that the estate shall be properly distributed as hereunder;

i. L.R. Uringi Part III Plot No.795 3.32 Acres

*Tabitha Nkatha* 0.55

*Nelly Kagwiria* 0.55

*Newton Mwiti* 0.55

*Patrick Murerwa* 0.55

*CarolyneKinya* 0.55

*Christine Gatwiri* 0.55

ii. L.r. Uringu Part I Plot No.1785 3.4 Acres

*Julius Miriti* 0.48

*Kenneth Kithinji* 0.48

*Zipporah Kairuthi* 0.48

*MichaolinaNkio* 0.48

*Lucy Gatumwa 0.48*

*Lydia Karambu 0.48*

*Mutuathimangu 0.48*

iii. L.R. Uringu Part III Plot No. 763 2.53 Acres

*Julius Miriti 0.36*

*Kenneth Kithinji 0.36*

*Zipporah Kairuthi 0.36*

*MichaolinaNkio 0.36*

*Lucy Gatumwa 0.36*

*Lydia Karambu 0.36*

*Mutuathimangu 0.36*

iv. L.r. Uringu Part II Plot No. 1023 8.23 Acres

*Doreen Muthoni 2.05*

*Rita Kendi 2.05*

*KanaroThimangu 2.05*

*Peter Nangithia 2.05*

v. L.R.Thau/Mumui/22 3.4 Ha (8.5 Acres)

*Tabitha Nkatha 1.41*

*Nelly Kagwiria 1.41*

*Newton Mwiti 1.41*

*Patrick Murerwa 1.41*

*CarolyneKinya 1.41*

*Christine Gatwiri 1.41*

vi. L.r. Uringu Part I Adj Section Plot No. 2812 5.2 Acres

*Alice Nkirote 1.3*

*KabuiThimangu 1.3*

*Damaris Nkatha 1.3*

*Robert Thimangu 1.3*

vii. Meru North L.R.No. Kianjai/Mituntu 37 4.9 Ha,

*Julius Miriti 1.2*

*Kenneth Kithinji 1.2*

*Zipporah Kairuthi 1.2*

*MichaolinaNkio 1.2*

*Lucy Gatumwa 1.2*

*Lydia Karambu 1.2*

*Mutuathimangu 1.2*

*Alice Nkirote 1*

*KabuiThimangu 1*

*Damaris Nkatha 1*

*Robert Thimangu 1*

Viii. Plot No. 3288

*Tabitha Nkatha*

*Nelly Kagwiria*

*Newton Mwiti*

*Patrick Murerwa*

*CarolyneKinya*

*Christine Gatwiri*

xi. PLOT NO. BII/ 186 MERU MUNICIPALITY MEASURING 25FT BY 15 FEET

½ Share to *Doreen Muthoni, Rita Kendi, KanaroThimangu* balance to be shared amongst the 3 remaining Houses

xii. PLOT NO. 9 KIANJAI MARKET& PLOT AT KIRINDINE 20 POINTS to be shared equally by all the beneficiaries.

[19] Grant confirmed in the foregoing terms. No orders as to costs.

**Dated, signed and delivered in open court at Meru this 17<sup>th</sup> day of December, 2018**

-----

**F. GIKONYO**

**JUDGE**

**IN PRESENCE OF**

Mutuma for applicant

Ann for M/s Kiome for Petitioner

.....

**F. GIKONYO**

**JUDGE**