



REPUBLIC OF KENYA
IN THE HIGH COURT KENYA
AT MERU
SUCCESSION CAUSE NO. 106 OF 2012
IN THE MATTER OF THE ESTATE OF THE LATE ITIRIBI
IMANYARA ALIAS M'ITIRIBI M'IMANYARA -DECEASED
M'ARIMI M'ITIRIBI.....PETITIONER

JUDGMENT

The Grant of Letters of Administration to the state of the above deceased ITIRIBI IMANYARA alias M'ITIRIBI M'IMANYARA was made on 21st day of December 2012 to M'Arimi M'Itiribi the petitioner herein who was the son of the deceased. The estate of the deceased consisted of A parcel of land No. Abothuguchi/Kariene/890. The deceased was survived by four children namely:

1. M'Arimi M'Itiribi
2. Gladys Ngeta M'Magiri
3. Esther Kathure Mutuambugu
4. Victoria Mwari Kangu.

By the time Chief of Kiria Location wrote letter dated 24th August 2011 confirming beneficiaries and/or dependants surviving the deceased the four children, a son and 3 daughters were 71,77,64,and 63 years respectively and the daughters were married each residing in their matrimonial homes.

The deceased according to Certificate of Death filed herein, died on 5th August 1975 long before the Law of Succession Act came into force in 1981.

Summons for confirmation of the grant was filed on 24th June 2013 and was supported by affidavit of the petitioner as well as consent on mode of distribution and consent to confirmation signed by the beneficiaries. on 9th July 2013 Susan Gaicugu, granddaughter to the deceased filed an application seeking to be joined as Co-Administrator with the uncle, the petitioner herein to protect the interest/wishes of her deceased grandfather on how the estate is to be distributed. Susan Gaicugu went ahead to file application for confirmation of grant dated 15th September 2014 after she had been made Co-administratrix with the uncle. She proposed the mode of distribution as per paragraph 5 of her supporting affidavit sworn on 15.9.2014 and filed on 16th September 2014. The 1st petitioner also filed a further summons dated 31st December 2014 and in his affidavit in support of confirmation made proposal on mode of distribution.

Victoria Mwari by an affidavit sworn on 24th May 2016 and filed on even date also proposed mode of distribution to the estate.

The 1st Administrator also filed another affidavit and he swore on 24th May 2016 on mode of distribution, that is not consistent with either Victoria Mwari and Susan Gaicugu. M/s Ntarangwi Advocates was subsequently appointed to act for the 1st Administrator and she did draw for him a further affidavit sworn on 27th January 2017 confirming his earlier proposal on mode of distribution i.e. that his 3 sisters are given $\frac{3}{4}$ of an acre to share equally while he gets 1.87 acres while the children of his deceased brother Juliua Mwirigi also to share equally 1.87 acres out of parcel No. Abothuguchi/Kariene/890 which forms the entire estate on the part of Susan Gaicugu she proposed that the 2 administrators share equally the whole portion of land but does not explain why her proposal excludes her father's three sisters. Mrs Ntarangwi Advocate filed submissions on behalf of the 1st Petitioner/Administrator to the effect that the 3 daughters of the deceased Itiribi Imanyara showed interest in the estate and each should be given $\frac{1}{4}$ of an acre. She said the proposal by the 2nd Administrator if accepted would be unfair, unjust and discriminative against the daughters of the deceased.

Mrs Ntarangwi Advocate submitted that Article 27(1) of the constitution provides that every person is equal before the law and has a right to equal protection of the law. She relied on the authorities of Francis Mwangi Thiongo & 4 others vs Joseph Mwangi Thiongo, Nyeri Court of Appeal Civil Appeal No. 8 of 2015 and Stephen Gitonga M'Murithi vs Faith Njira Murithi, Nyeri Court of Appeal Civil Appeal No. 3 of 2015 in which the need to protect all children equally was upheld. She urged the court to distribute the estate as proposed by the 1st Administrator.

Issues for determination:-

1. Being that the deceased herein Itiribi M'Imanyara died on 5th August 1975 which is the applicable law to his intestate estate?
2. What is the import of the provisions of the Succession Act as to the commencement date vis a vis the provisions of the constitution of Kenya 2010 in relation to equality before the law?

Article 10(2) (b) which provides the national values and principles of governance to include human dignity, equity, social justice, inclusiveness, equality, human rights, non discrimination and protection of the marginalized. Article 27 (1-8) Provides for equality and freedom from discrimination and Article 2(4) of the Constitution of (Kenya) 2010 provides that any law including customary law which is inconsistent with the constitution is void to the extent of its inconsistency. Thus any customary law that discriminates against women in inheritance is inconsistent with the letter and spirit of the constitution and thus null and void.

Although Susan Gaicugu the 2nd Administrator/Protestor gave no reason as to why she excluded her deceased father's sisters from benefiting from the award of portions of parcel No. Abothuguchi/Kariene/890 in the manner proposed by her Co-Administrator and the said beneficiaries one could easily read her mind that the deceased having died intestate prior to commencement of the succession Act the property of the deceased should be devolved in accordance with prevailing customary law of the tribe the deceased came from at the time of his death. One could also construe that she feels that aunts being married should not inherit from their father or even that being girls should not have inherited.

The land in question which forms the entire estate of deceased appears to have been registered and could not therefore have been devolved in accordance with the Customary Law of the deceased but in accordance with the law under which it was registered. The authority in High Court of Kenya at Nyeri Succession Cause No 620 of 2012 is relevant in the circumstances and I'm persuaded by the findings of my brother Justice Mativo that denying Gladys Ngeta M'Magiri, Victoria Mwari and Esther Kathure Mutuambugu $\frac{3}{4}$ of parcel of land No. Abothuguchi/Kariene/890 will go against the letter and spirit of the constitution.

The grant of letters of Administrators made to M' Arimi M' Itiribi and Susan Gaicugu is hereby confirmed in terms of further affidavit of M' Arimi M' Itiribi sworn on 27th January 2017 distributing one quarter of the parcel of land in question to each of the 3 sisters; 1.87 acres to 1st Administrator and 1.87 acres (Balance) to the 2nd Administrator and her siblings representing what was due to their deceased father Julius Mwirigi. Each party to bear their own costs of the cause and costs of the subdivision to complete the distribution. Order accordingly.

Ruling Signed and Dated this 29th day of March 2017. In the presence of:-

C/A-

Applicant –

Respondent

A.ONG'INJO

JUDGE