



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

SUCCESSION CAUSE NO. 647 OF 2009

In the Matter of the Estate of M' Turuchiu M'mwirichia (Deceased)

FRANCIS GITONGA M'MWIRICHIA.....PETITIONER

-VS-

JULIUS MIRITI.....1ST OBJECTOR

GEDION MBAYA.....2ND OBJECTOR

JUDGMENT

Distribution of intestate estate

[1] I am considering a Summons dated 10th February 2016 for Confirmation of Grant made to the three joint administrators herein on 28th May, 2015. The Summons is supported by the affidavit of Julius Miriti M'Mwirichia sworn on 10th February 2016. In the affidavit Julius proposed that the deceased's estate be distributed as follows:-

1. L.R ABOTHUGUCHI/KITHIRUNE/1965

- (a) Gedion Mbaya M'Turuchiu and**
- (b) Julius Miriti M'Turuchiu to share equally**

2. L.R ABOTHUGUCHI/KITHIRUNE/1959

- (a) Julius Miriti M'Turuchiu- wholly**

3. L.R ABOTHUGUCHI/KITHIRUNE/1963

- (a) Gedion Mbaya M'Turuchiu and**
- (b) Julius Miriti M'Turuchiu to share in equally**

4. L.R ABOTHUGUCHI/KITHIRUNE/1964

- (a) Gedion Mbaya M'Turuchiu and**

(b) Julius Miriti M'Turuchiu to share equally

[2] Francis Gitonga M'Mwirichia also filed a Reply Affidavit sworn on 19th April 2016. He strongly opposed the distribution proposed by Julius. He deposed that proposed distribution is aimed at stealing his share in the estate property. He averred further that all the beneficiaries have already constructed their homesteads on ABOTHUGUCHI/KITHIRUNE/1965; thus, he should not be ordered to demolish his home except if they will reimburse him. His view was that they should share this land according to the way they have constructed their homesteads. He went on to state that ABOTHUGUCHI/KITHIRUNE/1959 was given to him by the deceased during his lifetime and ought to be his. He accused the other administrators of not being candid that the deceased gave ABOTHUGUCHI/KITHIRUNE/1960 to Gedion and ABOTHUGUCHI/KITHIRUNE/1961 to Julius the same time he was given ABOTHUGUCHI/KITHIRUNE/1959. Again, he stated that Gedion and Julius sold ABOTHUGUCHI/KITHIRUNE/1960 and ABOTHUGUCHI/KITHIRUNE/1961 on 28th October 2004 and 7th May 2007 to Isaiah Gatobu and Jane Marete respectively. He annexed green cards for the two cards which show that these lands belonged to his father.

[3] Francis Gitonga M'Mwirichia deposed that ABOTHUGUCHI/KITHIRUNE/1963 is a roadside plot and each one of them should have a share. He proposed it be shared equally amongst the three of them. He also proposed ABOTHUGUCHI/KITHIRUNE/1964 and 1965 to be shared equally amongst them.

DETERMINATION

[4] Reaching any agreement on distribution of the estate properties has been elusive to these parties, hence, this ruling. I note from the green cards provided by Francis that Gedion and Julius had been registered as proprietors of ABOTHUGUCHI/KITHIRUNE/1960 and ABOTHUGUCHI/KITHIRUNE/1961 on 26th October, 2004 respectively. Again, on 28th October 2004 and 7th May 2007 these two properties were registered to Isaiah Gatobu and Jane Marete respectively. Gedion and Julius did not say anything about these transfers. They concealed their acquisition of the two pieces of land. They also concealed the transfer of these two pieces of land by them to third parties which was after the death of the deceased and without the authority of a grant or written law. Even the record shows that these properties for all purposes and intents belong to the deceased and I will treat them as such for purpose of these proceedings. This concealment of facts- but which were revealed by the Petitioner- as well as the record render credence to the averments by Francis that these two lands were given to Gedion and Julius whereas No 1959 was given to Francis by the deceased during his lifetime. Of significance is that these properties belonged to the deceased as at the time of his death, which is 16th September 2003. I will therefore take into account these properties when determining the share of the net intestate estate finally accruing to Gedion and Julius.

[5] I turn to determine the issue before me on distribution of this intestate estate. As there is nothing on record to suggest otherwise, I will deem that the intestate herein left surviving children but no spouse. Accordingly, it is a perfect case to apply section 38 of the Law of Succession Act. Section 38 provides that:-

38 Where an intestate has left a surviving child or children but no spouse, the net intestate estate shall, subject to the provisions of sections 41 and 42, devolve upon the surviving child, if there be only one, or be equally divided among the surviving children.

[6] Under Section 42 of the Law of Succession Act, where an intestate has, during his lifetime settled or given any property to or for the benefit of a child, that property shall be taken into account in determining the share of the net intestate estate finally accruing to that child. Therefore, the provisions of section 42 of the Law of Succession Act help to attain the principle of equality and equity in the distribution of the net intestate estate of the deceased. Accordingly, I hereby find and hold that the deceased had settled the following properties known as ABOTHUGUCHI/KITHIRUNE/1960 and ABOTHUGUCHI/KITHIRUNE/1961 to Gedion Mbaya and Julius Miriti, respectively. I hereby take those properties into account as part of their share in the net intestate estate accruing to them. The

evidence on record also shows that ABOTHUGUCHI/KITHIRUNE/1959 was settled or given to and I distribute it to Francis Gotonga. As for the other properties listed below, they shall be shared equally among Francis Gitonga, GedionMbaya and Julius Miriti, to wit:-

1. L.R ABOTHUGUCHI/KITHIRUNE/1963

2. L.R ABOTHUGUCHI/KITHIRUNE/1964; and

3. L.R ABOTHUGUCHI/KITHIRUNE/1965

Except, however, **L.R ABOTHUGUCHI/KITHIRUNE/1965** shall be subdivided in a manner that will take into account the homestead for each of the beneficiaries. This being a family dispute, I order each party to bear own costs of the proceeding. It is so ordered.

Dated, signed and delivered in open court at Meru this 22nd day of March 2017

F. GIKONYO

JUDGE

In the presence of:

Mr. Mutunga advocate for petitioner

Mr. Gatari advocate for objector

F. GIKONYO

JUDGE