



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NANYUKI
SUCCESSION CAUSE NO. 27 OF 2016

ESTATE OF M'RUKARIA M'IMANENE.....DECEASED

AND

EVANGELINE MUTHONI M'RUKARIA.....PETITIONER

JUDGMENT

1. **M'RUKARIA M'IMANENE** (deceased) died on 1st April, 2008. His wife **EVANGILINE MUTHONI M'RUKARIA** (now deceased) petitioned for letters of administration intestate in respect of his estate. A grant was issued on 20th January, 2015 to the said petitioner. It is not clear why the said petitioner failed to have that grant confirmed any earlier when the Succession Cause was pending before Nyeri High Court.

2. The Succession Cause was transferred to Nanyuki High Court in March 2016 and the petitioner filed Summons for confirmation of grant dated 22nd April, 2016. In that Summons the petitioner sought the two properties of the estate to be disturbed to her. It ought to be noted that the beneficiaries of the deceased's estate are the petitioner (now deceased) and eleven children of the deceased. The petitioner passed away on 24th July 2016 before the summons for confirmation was heard. As a consequence and in exercise of the court's discretion, under **Section 66 of the Law of Succession Act**, this court on 16th March 2017 ordered that grant of letters of administration be issued to two of the deceased's sons namely: **PAUL MIRITI RUKARIA AND DAVID MBAYA RUKARIA**.

3. On 23rd March 2017 the surviving beneficiaries, except Jane Nyoroka appeared before court. All the beneficiaries before court, except **JULIUS KINYUA**, consented to the two properties of the estate being held in trust for all of them by Paul Miriti Rukaria and David Mbaya Rukaria. In view of that objection by Julius Kinyua the court ordered oral evidence be adduced.

4. Paul Miriti (Paul) stated that he intended to hold the two properties in trust for all the children of the deceased. Paul stated that at the time of death of their father, the deceased in this estate, Julius Kinyua (Julius) had wronged their late father and that as a consequence their late father had disinherited Julius. That before the death of their late father, he had chased Julius away from the family property, which is **NANYUKI/SOUTH TIMAU BLOCK 1/381**. That Julius had previously objected to the petitioning for grant of letters of administration and to that end had placed a caution against that property. That Julius demand to be paid Ksh. 20,000 in order to remove that caution, which money was paid but he however failed to remove the caution.

5. David Mbaya (David) stated that the family's intention was that he and Paul would hold the family properties in trust for the rest of their siblings. David further stated that Julius and his wife abused their deceased father and as a consequence their late father stated that Julius should not inherit his properties

and should not attend his funeral. That Julius refused to be reconciled with their late father before their late father died. He however stated that their father, in his life time, stated that if Julius ever desired to use the family land he be allowed to do so.

6. Julius Kinyua (Julius) stated that he objected to the estate property being held in trust by Paul and David. Julius denied having disagreed with their late father but that it was his wife who disagreed with their late father. That disagreement led him to move out of the family land.

7. Because of the disagreement on distribution between Julius and his siblings I am tasked with making the decision on the distributing of the estate. The estate has two properties namely **NANYUKI/SOUTH TIMAU BLOCK 1/381 and NTIRIMITI MARKET APPLICATION NO. 38763.**

8. I have considered the oral evidence adduced before court. It is clear that the majority of the deceased's children, ten of them are in agreement that both those properties be held in trust for all the children of the deceased by the administrators of the deceased estate. Julius on the other hand objected to that proposal but did not given an alternative mode of distribution of the estate. It is clear from the evidence adduced that Julius and his wife were not in good terms with the deceased before his death. It is for that reason that whereas the other children of the deceased use the family land to cultivate Julius does not. In my considered view that status quo should continue. There is no reason why the land, as proposed by the majority of the deceased's children, should not be held in trust for them by the administrator.

9. In conclusion I order in this judgment as follows:

(a) **A grant shall issue for this estate to PAUL MIRITI RUKARIA and DAVID MBAYA RUKARIA**

(b) **THAT grant is hereby confirmed as follows:**

(i) PAUL MIRITI RUKARIA and DAVID MBAYA RUKARIA shall hold parcels No. NANYUKI/SOUTH TIMAU BLOCK 1/381 and NTIRIMITI MARKET APPLICATION NO. 38763 in trust for PAUL MIRITI RUKARIA, AGNES KARURU RUKARIA, JULIUS KINYUA RUKARIA, ALICE KANYAMU MAINA, JANE KARAMBU, JOHN MWENDA RUKARIA, GLADYS KINANU THUMBI, LOISE NDUMBA, DAVID MBAYA RUKARIA, JULIA KATHURE and JANE NYOROKA M'RINGERA

(c) **Order (b) does not grant Julius Kinyua Rukaria the right to cultivate parcel NANYUKI/SOUTH TIMAU BLOCK/381.**

(d) **The caution lodged by Julius Kinyua Rukaria on 14th September 2007 on parcel NANYUKI/SOUTH TIMAU BLOCK 1/381, is hereby ordered to be removed**

(e) **There shall be no order as to costs.**

Dated and Delivered at Nanyuki this 25th day of May 2017.

MARY KASANGO

JUDGE

CORAM:

Before Justice Mary Kasango

Court Assistant – Njue

1st Petitioner: Paul Mirit Rukaria

2nd Petitioner: David Mbaya Rukaria

COURT

Judgment delivered in open court.

MARY KASANGO

JUDGE