



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MERU
SUCCESSION CAUSE NO. 52 OF 2014
IN THE ESTATE OF LEONE MAGAMBO M'RINGERA
ALIAS RINGERA MAGAMBO (DECEASED)
COLANDO KIRIMI M'RINGERA.....PETITIONER
VS
MARITINA NCABIRA M'RINGERA.....PROTESTER

JUDGEMENT

Colando Kirimi M'Ringera petitioned for letters of Administration to the estate of his father the deceased herein Leone M'Ringera Magambo who according to the Certificate of Death No. 113904 dated 1st day of April 1985 died on 24th January 1985 leaving behind the following survivors according to chiefs letter dated 28th October 2013 from Gaitu West Location:-

1. Colando Kirimi M'Ringera
2. Germano Kutungi M'Ringera
3. Veronica Mukiri Kinoti
4. Maritina Ncabira
5. Zaberio Kinyua Kinoti.

Grant of Letters of Administration was made on 20th day of August 2014 to Colando Kirimi M'Ringera who subsequently on 20th March 2015 filed application for confirmation supported by affidavit worn on 26th March 2015 as well as annexed consent for distribution signed by Corando Kirimi M'Ringera, Germano Kithinji M'Ringera, Veronica Mukiri Kinoti and Zaverio Kinyua Kinoti, Martina Ncabia neither signed by the consent to distribution or confirmation. Martina Ncabia filed affidavit in protest on mode of Distribution averring that she is daughter of the deceased and that she was protesting manner in which her brother the administrator had distributed her father's estate.

She said even late father had 5 children including herself and one of them Angelo Gikunda died leaving no surviving children. She said Zaverio Kinyua Kinoti was her sister, Veronica Mukiri Kinoti's son who had been given 1.50 acres and Veronica given 0.50 acres and yet she was being given only 0.50 acres.

She averred that the Administrator had allocated himself the lions share and sold 1.50 acres to Veronica Mukiru's son.

She prayed that the estate be distributed equally among the deceased person's children and that the real beneficiaries be determined. In submissions the protester reiterated averments in her affidavit in protest of distribution and said the administration had sold portions of the estate to Zaberio Kinyua Kinoti and Erastus Maguru Ringera to the detriment of her share. The petitioner didn't respond to the affidavit as protest and instead filed application dated 3rd April 2017 seeking that the court summons their uncle Samuel M'Ituma to shed light in the matter as he is the one had been left as the father of the family and knew the wishes of the deceased. It was averred by petitioner that their brother Angelo Gikunda before his death had sold his part of the estate to Zaberio Kinyua Kinoti.

The protester testified and said her late father died suddenly and never called any meeting to share out his property before he died. She said when succession cause was filed she was never informed. She said the petitioner/Administrator is using the entire land and has leased out some, she said the estate should be shared equally i.e 3 acres each.

The petitioner gave oral evidence and said that his father had subdivided his land and gave out to his children in the presence of elders among them M'Ituma. He said he was given 3.5 acres and Germano was also given 3.50 acres and Angelo took the remaining parcel as he was staying within the homestead.

He said he was instructed to give Veronica ½ an acre in event she was chased from her matrimonial home and Germano was to give Mautuma ½ an acre in event she was chased from her matrimonial home.

He said he could not go against the wishes of his deceased father. He said Angelo died in 2014 and not 1991. He said Angelo sold his portion of the land but the land was still registered in the name of the deceased, PW2 said the subdivision was not in writing. He said that the land has not been sold. He said he didn't know Erastus Maguru and he is not entitled to any portion of the estate. He admitted that Zaberio Kinyua Kinoti is son to his sister and was helping Angelo Gikunda the deceased.

Germano also testified and was in agreement with Colando that their father gave them 3.50 acres each leaving 4 acres to Angelo Gikunda who later died in 2015 leaving no surviving children. If that be the case Colando has not explained why then he was taking 4.3 acres and not the 3.50 acres which he alleged his father bequeathed to him. If he says he can't defy the wishes of his deceased father then he should have stuck to the 3.50 acres alleged given to him by his father while still alive.

Out of the 11.70 acres if the to get 7 acres the balance will be 4.70 acres which should be shared equally between the surviving 2 daughters. However because the protester herein Martina Ncabera is claiming only 2 acres and Veronica Kinoti didn't protest when she was given 0.50 acres and her son given 1.50 acres I will order that the daughters each get 2 acres and the remaining 0.70 acres to go to Colando and Germano in equal shares.

Colando will therefore get 3.85 acres and Germano 3.85 acres. Veronica 2.00 acres, Martina 2 acres.

The administrator Colando claimed that their deceased brother Angelo Gikunda gave/sold his portion of the estate to the son of Veronica Kinoti but there is no evidence of sale. In any event the property having been in the name of the deceased, the said Angelo had not obtained authority to deal with the estate property and if he did that it would have amounted to intermeddling with estate property and therefore null and void ab initio. (Judgment is therefore entered) This court therefore finds in favour of protester and distributes the estate as above indicated. Certificate of confirmation will issue to that effect. No order as to costs.

Ruling Signed, Delivered and Dated this 31st Day of August 2017.

HON. A.ONG'INJO

JUDGE

In the presence of:

C/A - Penina

Petitioner:- Ms Muna Advocate for Petitioner

Protester:- Mr Mutunga Advocate for Objector

HON. A.ONG'INJO

JUDGE

Mr Muna Advocate

I pray for a copy of judgment

Order

Certified copy of judgment to be supplied upon payment of charges.

HON.A. ONG'INJO JUDGE

31.8.2017