



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

SUCCESSION CAUSE NO. 91 OF 2011

IN THE MATTER OF ESTATE OF SIMON ANAMPIU M'MURUGU (DECEASED)

RAEL KAARI M'ANAMPIU

ELIAS GITONGA WANAMPI..... PETITIONERS

VS

STANLEY MATHIU ANAMPIU ..

BENJAMIN KANYINYUI ANAMPIU

PETER GITONGA M'ANAMPIU.....PROTESTORS

JUDGEMENT

The deceased person in this cause Simon Anampiu M'Murugu died on 3rd day of July 1990 and was survived by

1. Rael Kaari — wife- widow aged 87 years
2. Stanley Mathiu — son
3. Benjamin Kanyinyui — son
4. Susan Mukomwathi —daughter
5. Florence Mukethi:- , daughter
6. Peter mutagia — son
7. Elias Gitonga — son
8. Cecilia Mukuba — daughter
9. Rose Kananu — daughter

He died intestate and the estate is made up of parcels of land No.s

- a) Nyaki/Munitu/290 — 7.0026 Ha
- b) Kithoka/ Mwanka/26 — 2.40 Ha

The deceased persons widow Rael Kaari and son Elias Gitonga filed petition seeking for Grant of Letters of Administration which was made to them on 13th day of November 2013. When Rael Kaari the widow applied for confirmation of grant vide application dated 27th May 2014 consent for confirmation and distribution was signed by all beneficiaries except Benjamin Kanyinyui, Peter Mutayia and Stanley Mathiu who

filed affidavit in protest sworn by Peter mutayia on 30th March 2015 objecting to distribution of the estate to their sisters susan Mukamwathi, Florence Mukethi, Cecilia Mukuba Anampiu Rose Kananu who were said to be all married and had their own land.

It was claimed in the affidavit in protest that the deceased did not say that the daughters get land from his estate but Peter Mutayia and his brothers were agreeable to give them some portion of land.

He averred that if deceased daughters are given land the deceased sons born out of wedlock would claim land from them.

He proposed that family members sit and discuss issue of distribution. The 1st Administrator Rael Kaari died on 5th July 2015 and by an application dated 12th July 2016, the 2nd Administrator applied that grant made to him jointly with Rael Kaari be revoked and another one issued to him and Florence Mukethi. In the supporting affidavit to the application, Elias also applied that the grant that was to be made to him and Florence jointly be confirmed and at paragraph 7 he proposed mode of distribution of the estate.

Peter Mutayia, Stanley Imathiu and Benjamin Kanyinyui testified in support of the protest to confirmation and distribution saying that land parcel No. Nyaki/Muathu/290 should be shared between Stanley Imathiu, Elias Gitonga, Benjamin Kanyinyui and himself and No. Nyaki/Kithoka/26 to be shared by himself, Joshua Muriki, David Ikuetha, Julius Kaburu and Robert Mbaabu. He said his sisters would each get 1/4 acre from their shares.

1st Protester said their mother was using entire parcel at Kithoka/26 before she grew old and they started using it. He said Cecilia Mukuba their sister used to stay with the mother and used portions of land that belonged to their mother.

He said it was not justifiable to share No. 290 equally. He said none of the siblings had title to land.: He said it was not their fathers wish that the daughters inherit land. He said David Ikutha his father's son and lives in Kaithe and was not shown where to live by the deceased. He said Julius..Kaburu is his cousin; Robert is son to his step father and Joshua Muriki.is grandson to the deceased and son to Stanley who is alive. Stanley Imathiu said his father had not wished his daughters to inherit land but that they were ready to give them each 1/4 acre from their shares. He said that his father had 4 sons out of wedlock and they should be given land although they had not made any claim.

Benjamin said that their sister Susan Stays on L.R. while the others Cecilia and Rose Kananu stay on Kithoka/26. He supported proposal for distribution by Peter Mutayia. He said the sisters were staying with their mother in L.R. Kithoka/26. He said the other persons proposed to benefit are their uncle's son. The petitioner said the deceased didn't have child out of wedlock. He said the proposal made by him for distribution should be adopted. He admitted that Joshua Muriuki stays on parcel No. 26 on portion that is his father's share.

From the evidence on record and from affidavits filed by parties herein the issues for determination are whether the protesters have proved on a balance of probabilities that their proposal for distribution serves the justice of the parties. It is conceded by Elias Gitonga M'Anampiu that Joshua Muriki, son to Stanley Imathiu stays on parcel No. Kithoka/26 on a portion that belongs to his father.

From the proposal for distribution of the said: parcel, the said portion should be identified specified and removed from portion that is to be distributed to Cecilia Mukuba and Rose Kananu.

For the distribution of parcel No. Nyaki/Munithu/290, the majori are supporting the distribution as per paragraph 7 of the affidavit of Elias Gitonga M'Anampiu sworn on 12th July 2016 and therefore the court adopts the same.

Certificate of confirmation and distribution to issue in accordance with the said proposal. The protesters claimed that their father had children out of wedlock who were entitled to inherit but it turned out the names given belonged to cousins of protesters. The said cousins didn't attend court and didn't swear affidavits making any claims and it is, not understandable why the 3 protesters felt that their cousins should have priority inheriting from their father's estate than their sisters from the same parcels. The protest is therefore dismissed. No orders as to costs.

HON A.ONG'INJO

JUDGE

31.8.2017

Before Adwera-ong'injo

Penina — C/A

Mr Gikunda Anampiu Advocate Holding brief for Ayub Anampiu for

Objectors/Protestors.

Mr Ringera Advocate for Petitioner.

Court

Ruling Delivered, Dated and Signed in Court.

HON A.ONG'INJO

JUDGE