



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIVASHA
SUCCESSION CAUSE NO. 96 OF 2015
IN THE MATTER OF THE ESTATE OF RUTH MUGURE
MUCHIRI alias RUTH MUGURE MUCIRI (DECEASED)
JOSEPH MUCHIRI NG'ANG'A.....PETITIONER
AND
JOSEPH GIKARU MUCHIRI.....OBJECTOR

R U L I N G

1. **Ruth Mugure Muchiri**, the deceased herein, died intestate on 29th January, 2010. She was survived by two sons namely, **Joseph Muchiri Ng'ang'a** (Petitioner herein) and **Joseph Gikaru Muchiri**. Whilst this ruling was pending, the Petitioner passed away and his wife **Mary Nyambura Muchiri** was substituted as an administrator. The subject matter of this ruling is the summons for confirmation of a grant filed by the Petitioner before his death, on 20.6.16. The grant having been issued to him on 15th December, 2015.

2. By the said summons, the Petitioner listed the two beneficiaries of the deceased and a single property as comprising the estate of the deceased, namely **plot 34 Longonot Settlement Scheme**. He proposed to take for himself the entire share. On the date scheduled for the hearing of the summons, it was noted that the second son of the deceased was absent and the court ordered that he be served to attend the proceedings. The petition had been filed with his consent.

3. When he appeared, the second beneficiary, John Gikaru Murengi addressed the court as follows:-

“I am the second son of the deceased. The Petitioner did not list all the properties subject of the estate. There is a plot at Mirera where we live, Longonot plot and Utheri wa Lari plot. I want the estate to be shared equally.”

The Petitioner did then confirm that indeed there were 3 parcels of land and was ordered to avail documents in that regard.

4. On 19/4/17, he presented payment receipts in respect of plot **No. 358 Utheri wa Lari, plot No.368 Mirera** and also reiterated the existence of plot **No.34 at Longonot Settlement Scheme**. The documents tendered are in the name of the deceased who seemingly purchased shares in Mirera-Suswa Farmers Limited and Utheri wa Lari Company Limited in the 1970s and 1980s. With regard to **plot No.**

34 Longonot, there is a letter filed alongside the Petition confirming that **plot 34 Longonot Settlement Scheme** belonged to the deceased. The letter is authored by the sub-county Land Adjudication and Settlement Officer, Naivasha.

5. The court therefore ordered on 20/4/17 that the three parcels above would be treated as comprising the estate of the deceased and subsequently directed the two siblings to file affidavits proposing the mode of distribution.

6. For his part, the late Petitioner filed an affidavit on 9.6.17 proposing that the parcel **no. 34 Longonot** which measures 8 acres be shared with his brother in the ratio of 7 and 1 acres respectively. He proposed further that the Mirera plot be shared equally while the second brother would inherit the whole of the **Utheri wa Lari plot**.

7. He stated that his brother had no wife or children while he, the late petitioner, was married. This was stated in court orally on 19/4/17 while the petitioner presented the receipts in respect of the properties. He also told the court that he had 9 children while the second brother was unmarried and had no children.

8. The said brother **John Gikaru Murengi** admitted these facts before the court but stated that he had plans to start a family even though he was 45 years old (to the court, he appeared much older). He further stated:

“The relatives have insisted to me that we share equally. My aunts are the ones saying so.”

9. When he eventually filed his affidavit on 17/7/17, the said beneficiary, Joseph Gikaru Murengi claimed he had not participated in filing the petition and confirmed that the late Petitioner and himself were the only surviving children of the deceased. But in disputing the late petitioner’s claim to be married, he asserted that it did not matter whether he himself was married or not, and further that he hoped in the future to tie the knot with one of the existing “aspirants.”

10. He urged the court to only take into account the land parcels **Mirera plot 368** and **Longonot plot 34** (or as he referred to it **plot 2185**) and contending that **Utheri wa Lari plot No. 358** is “non-existent”. He sought that the grant be confirmed in his name and the late petitioner and urged that the two parcels of land he identified be distributed equally.

11. Having considered all the material before me, it is my view that only two issues stand to be determined, namely the confirmation of the grant and distribution of the estate. With regard to the properties that constitute the deceased’s estate, it is John Gikaru Murengi who first raised the question of the two additional plots on 23/2/17 when he first appeared in court. As indicated, the late petitioner had only listed plot **34 Longonot Settlement Scheme** in his petition but on the above date, John Gikaru Murengi listed the **Mirera** and **Utheri wa Lari** plots as belonging to his deceased mother.

12. When the late petitioner presented payment receipts in respect of the 3 plots, John Gikaru Murengi appeared content, only demanding a half share of everything. On the basis of these proceedings and documents proffered by the late petitioner, the court directed that the three plots be included in the deceased’s estate. It is therefore surprising and too late for John Gikaru Murengi to turn around and dispute the existence of the **Utheri wa Lari plot**.

13. Equally, though this may not be a determining, albeit relevant factor, he had not previously contested the fact that the late petitioner was married with 9 children, as he now does in his affidavit. There was no objection made to the application made by the wife of the late petitioner to be substituted in place of the said petitioner. Her documents include an introduction letter dated 9th November, 2017 from the Chief Mirera Sub-location indicating that she is the wife of the late petitioner and that they had 9 children together, the youngest four being minors.

14. Thus in my view, the about-turn by John Gikaru Murengi as regards the extent of the estate of the deceased appears an afterthought but also flies in the face of an order of this court that has not been

challenged. For the purposes of distribution therefore, this court will consider the 3 properties as per its orders made on 20/4/17.

15. Turning to distribution, it is a pity that apart from the Longonot plot, the acreage of the other properties and/or value is not known. It has always to be remembered, however, that distribution of estates is not based on neat mathematical formulae but is aimed at achieving equity (**(see Rono -Vs-Rono) [2005]eKLR**). Bearing all the circumstances of this case in mind, it seems to me equitable to confirm the grant in the joint names of **Mary Nyambura Muchiri** and **John Gikaru Murengi**; and further to distribute the deceased's estate as follows:

a) Utheri wa Lari plot No. 358 – to devolve upon John Gikaru Murengi absolutely.

b) Longonot Settlement Scheme plot No. 34 to be shared as follows:

Mary Nyambura Muchiri – 6.5 Acres

John Gikaru Murengi – 1.5 Acres

c) Plot No. 368 Mirera Settlement Scheme to be shared equally between Mary Nyambura Muchiri and John Gikaru Murengi.

Each party will bear own costs.

Delivered and signed on this **22nd** day of **November, 2017**.

In the presence of:-

For the Petitioner in person

Mr. Kimani for the Objector

Court Clerk - Barasa

C. MEOLI

JUDGE