



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

SUCCESSION CAUSE NO. 66 OF 2014.

IN THE MATTER OF THE ESTATE OF THE LATE MAKEMBO KITHERE – DECEASED

ELIZABETH GACENGU MAKEMBO.....1ST PETITIONER

JOHN KIRIMA MAKEMBO..... 2ND PETITIONER

VS

JOYCE KAREGI MAKEMBO..... OBJECTOR

JUDGMENT

The deceased herein died intestate on 9th June 2010 leaving behind;

1. Elibath Gacengu Makembo – Widow
2. Joyce Karegi- daughter
3. John Kirima – son
4. Joshua Gitonga – Son
5. Mwathi Makendo –Son
6. Mwiti Makembo – Son

The net intestate estate is made up of Tharaka/Nkondi 'A' /193 Elizabeth Gacengu Makembo filed petition for Letters of Administration to the intestate estate and Temporary Grant was made to her and John Kirima Makembo as joint administrators. Application for confirmation dated 10th June 2015 was filed by Administrators supported by affidavit of Elizabeth Gacengu Makembo and John Kirima Makembo in which the entire L.R. No. Tharaka/Nkandi 'A'/93 measuring about 0.47 Ha.

Joyce Karegi filed objection to making of grant and said the estate should be shared equally among the deceased children and that Elizabeth Gachengu is not entitled inherit as the deceased excluded her from inheritance.

Joyce Karegi said there is another land 80 acres which was about 80 acres which she wanted shared equally. She said the said land is occupied by the Petitioners and her sons John Kirima and Mwiti Makembo.

In Replying Affidavit Elizabeth Gacengu said that the deceased bequeathed No. Tharaka/Nkando/193. That the deceased had another unregistered land at Ikerebemi Kathangachini Location measuring 40 acres.

She alleged that the deceased said each of his sons should get 9 acres out of the Ikerebimi land. She said the Objector is married and has land at her husband's place and her claim is sign of greed.

In her statement the Objector says the Administrators have refused to recognize her as the daughter of the deceased and have gone ahead and sold a huge chunk of the deceased land without her consent. The Petitioner on the other hand has made a proposal that the unregistered land at Ikerebemi, Kathachuni location measuring 40 acres be distributed equally among the deceased children including the Objector and that each would consequently get 8 acres of land.

That the entire L.R. No. Tharaka/Nkondi A/193 measuring 0.47 Ha to go to the 1st Petitioner. The 1st Petitioner does not say why she should get L.R. Tharaka/Nkondi A/193 exclusively.

In pursuit of Section 35(1) the surviving spouse of the deceased is entitled to personal and household effects of the deceased absolutely and a life interest in the whole of the net intestate estate.

S.35(5) of the Law of Succession Act provides for equal distribution of the property among the children of the deceased as was held in the Matter of the Estate of Kinyuru Karanja (deceased) save where some of the children are so young, the younger children as per Section 40 may require to get more shares as they still require to be maintained, educated and generally seen through life. This was the holding of Omollo JA in Ron vs Rono & Another (2005).

In the circumstances of the above discourse it is my considered finding that the intestate estate herein be distributed equally among the beneficiaries i.e L.R No. Tharaka/Nkondi A/193 measuring 0.47 Ha and the unregistered land at Ikerebemi Kathachi Location measuring 40 acres be distributed equally among the beneficiaries namely;

1. Elizabeth Gacengu Makembo
2. Joyce Karegi Makembo
3. John Kirima Makembo
4. Joshua Gitonga Makembo
5. Mwathi Makembo
6. Mwiti Makembo

Each party to bear their own costs.

HON. A.ONG'INJO

JUDGE

Ruling Delivered, Dated and Signed in court on 16th day

Of November 2017.

In the presence of:

C/A:Penina

Petitioners: Ms Wanjohi holding brief for Mburugu Advocate for Petitioner

Objector: Mr Kariuki B G Advocate for Objector – N/A

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HON. A.ONG'INJO

JUDGE