



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT CHUKA
SUCCESSION CAUSE NO 691 OF 2015
IN THE MATTER OF ESTATE OF M'RINKANYA KIAGA- DECEASED

AND

JENIFFER KANYUA..... 1ST ADMINISTRATIX

MATHRICE ITHIRU M'RINKANYA..... 2ND ADMINISTRATIX

J U D G M E N T

1. This cause relates to the estate of the late M'Rinkanya Kiaga (deceased) who died intestate on 5th August, 1978 resident at Ganga Location within the then Meru South District (Now Tharaka Nithi County.) The petition for letters of administration in respect to the administration of the estate of the deceased herein was initially presented by Margaret G. Mwiandi a daughter in law to the deceased. The properties comprising the estate were listed in the petition as follows:-

(i) **LR MWIMBI/S.MAGUMANGO/458** measuring approx. 7.29 Ha.)

(ii) **L.R. MWIMBI/S.MAGUMANGO/479** measuring approx.2.83 Ha.)

2. The initial petitioner had listed only two dependants in the petition initially presented in the subordinate court. The two were:-

(i) Margaret Gakurii Mwiandi (petitioner) and

(ii) Erick Gitonga Mwiandi

3. The record of proceedings indicate that **AGNES MUKWAIKU M'RINKANYA** later filed objection claiming that she was the widow to the deceased and applied for revocation of a grant that had been granted to the Petitioner, claiming that, the petitioner had filed the petition secretly without involving her. According to her the deceased was married to two wives namely **FIDES MUKWAMUGO M'RINKANYA** (deceased) (first wife) and herself as the 2nd wife. She listed the dependants as follows:-

(i) From the first house;

a. Alison Mukwairu - married daughter

b. Jenniffer Kanyua - married daughter

- c. Joyce Mukwandeke - married daughter
- d. Mwiandi M'Rinkanya - Deceased son- husband to Margaret G. Mwiandi - the petitioner).
- e. Mumu M'Rinkanya- son

(ii) 2nd House

- a. Mbae M'Rinkanya- son -deceased
- b. Mukwanjiru M'Rinkanya- deceased
- c. Mukwanjagi M'Rinkanya- deceased
- d. Mathrice Ithiru M'Rinkanya- married daughter

4. This court upon recording a consent between the parties revoked the grant issued to the initial petitioner on 8th September 2008 and issued a fresh grant to both Jenniffer Kanyua and Mathrice Ithiru M'Rinkanya. There was a protracted push and pull regarding DNA test to establish the paternity of the listed children of the deceased which was finally resolved through a ruling delivered by this court on 20th July 2017 which opened the avenue to canvass the issue of distribution of the estate of the deceased herein. It is important to note while this matter was going on this court allowed Mathrice Kathure Ithure to act in place of her elderly mother Agnes Mukwairu M'Rinkanya on account of her very advanced age. It was on that account that Mathrice Ithiru M'Rinkanya was appointed joint administratrix together with Jeniffer Kanyua who represented the 1st house.

5. Mathrice Ithiru M'Rinkanya vide summons of confirmation of grant dated 24th July 2017 listed the following as dependants in her affidavit in support of summons for confirmation of grant.

- a. Margaret G. Mwiandi
- b. Mathrice Ithiru M'Rinkanya
- c. Jeniffer Kanyua
- d. Joyce Mukwandeke
- e. Alison Mukwanjiru
- f. Agnes Mukwairu M'Rinkanya
- g. Ngige M'Aribu

She also proposed to have the estate of the deceased herein distributed as follows:-

A. MWIMBI/S.MUGUMANGO/458

- (I) Agnes Mukwairu M'Rinkanya - 4 acres
- (ii) Margaret G. Mwiandi - 6 acres
- (iii) Mathrice Ithiru M'Rinkanya - 2 acres
- (iv) Jeniffer Kanyua - 2 acres

- (v) Joyce Mukwandeke - 2 acres
- (vi) Alison Mukwairu - 2 acres
- (vii) Ngige M'Aribu - 1 acre

B. MWIMBI/S.MUGUMANGO/479

- (i) Agnes Mukwairu M'Rinkanya - 1 acre
- (ii) Margaret G. Mwiandi - 4 acres
- (iii) Mathrice Ithiru M'Rinkanya - 0.5 acre
- (iv) Jeniffer Kanyua - 0.5 acre
- (v) Joyce Mukwandeke - 0.5 acre
- (vi) Alison Mukwairu - 0.5 acre

6. At the hearing of the protest filed by Jeniffer Kanyua, Mathrice Kathure Ithiru justified her mode contending that the mode catered fairly and equally to all the children of the deceased. She further proposed that Ngige M'Aribu a grandson of the deceased be catered for in the distribution of the estate.

7. Jeniffer Kanyua the other appointed administrator protested to the mode of distribution proposed by her co-administratrix. Her protest however is only limited to the proposed mode of distributing **L.R. MWIMBI/S.MUGUMANGO/458**. In her affidavit of protest she has deposed that she agrees with the applicant's proposed mode of distribution in respect to **MWIMBI/S. MUGUMANGO/479**. She however opposes the proposed mode in respect to **MWIMBI/S.MUGUMANGO/458** and the reason for her objection is that Agnes Mukwairu, the surviving widow is old and giving her 4 acres is indirectly benefitting Mathrice Kathure Ithiru M'Rinkanya her only daughter and child. She has further deposed that Margaret Mwiandi occupies that parcel and her children and should on that account be given a larger share. She has therefore proposed that **L.R MWIMBI/MUGUMANGO/458** be distributed as follows:-

- (i) Agnes Mukwairu M'Rinkanya - 2 acres
- (ii) Margaret G. Mwiandi - 8 acres
- (iii) Mathrice Kathure Ithiru M'Rinkanya - 2 acres
- (iv) Jeniffer Kanyua - 2 acres
- (v) Joyce Mukwandeke - 2 acres
- (vi) Harrison Mukwairu - 2 acres
- (vii) Ngige M'Aribu - 1 acre

8. The estates of deceased persons dying before the commencement of Law of Succession Act (Cap 160 Law of Kenya) which was 1st July 1981 are subject to written laws and customs applying at the date of the death. The deceased herein died on 5th August, 1978 which was before the Law of Succession Act was enacted. This means that in accordance with **Section 2 (2)** of that Act, the administration of his estate including distribution is required to be done according to the customs prevailing at the time in so far as the same customs are fair and not repugnant to justice or contrary to law. In this cause none of the parties invoked the customary practice in the distribution of the estate and no evidence was laid before me on how the community from which the deceased came from dealt with the issue of distribution in a

polygamous unions such as in this cause.

9. The 1st administratrix gave her proposal on how the two parcels comprising the estate should be distributed. The properties are:-

(i) L.R MWIMBI/S.MUGUMANGO/458 (7.29 ha) &

(ii) L.R.MWIMBI/S.MUGUMANGO/479 (2.83 ha)

10. It is not in dispute that the deceased left behind the following dependants surviving him namely:-

- (i) Agnes Mukwairu M'Rinkanya - wife
- (ii) Mathrice Ithiru M'Rinkanya - Daughter
- (iii) Margret G. Mwiandi - Daughter-in-law
- (iv) Jeniffer Kanyua - Daughter
- (v) Joyce Mukwandeke - Daughter
- (vi) Alison Mukwairu - Daughter
- (vii) Ngige M'Aribu - Grandson

11. This court has noted from the proposals given by both the administratrixes that they have virtually agreed on how the estate should be distributed and this court went to great lengths trying to get the parties to agree given the lengthy period this matter has taken to be resolved. I have noted that both parties herein agreed on how that property known as **L.R. MWIMBI/S.MUGUMANGO/479** should be distributed and in order to promote cohesion and peaceful co-existence among the family members this court shall adopt the agreement reached in respect to that property because the distribution fairly takes care of all the children. That property known as **L.R. MWIMBI/S.MUGUMANGO/479** shall therefore be distributed as follows:-

- (i) Agnes Mukwairu M'Rinkanya - 1acre
- (ii) Margret G. Mwiandi - 4 acres
- (iii) Mathrice Ithiru M'Rinkanya - 0.50 acre
- (iv) Jeniffer Kanyua - 0.50 acre
- (v) Joyce Mukwandeke - 0.50 acre
- (vi) Alison Mukwairu - 0.50 acre

12. I have considered both the respective proposals made by the two administratrixes on how the remaining estate should be distributed and note that the two proposals are almost similar with the only difference being 2 acres. While the first administratrix suggests that Margaret Mwiandi should be given 8 acres and the widow 2 acres, and 2nd administratrix states that the widow should be given 4 acres while Margaret should be given 6 acres. This court in resolving this difference is left with little option other than to apply the current law on succession to fairly resolve it. The provisions of **Section 35 and 40 of Law of Succession Act (Cap 160)** provides that where an intestate has left one surviving spouse and children the estate shall be divided equally among the surviving children with the widow being added as an additional unit. This therefore means that the property comprised in **MWIMBI S. MUGUMANGO/458** shall be distributed equally among the surviving children of the deceased with the widow inclusive. This

court was told by both parties that the deceased took care or lived with Ngige M'Aribu his grandson and in that regard one acre should be given to him. Again because both parties are agreed on this aspect this court shall adopt that agreement. The estate comprised in L.R. MWIMBI/S.MUGUMANGO/458 shall therefore be distributed as follows:-

(i) Agnes Mukwairu M'Rinkanya - (life interest)

(ii) Ngige M'Aribu -1 acre

(iii) Magret G. Mwiandi

(iv) Mathrice Ithiru M'Rinkanya

(v) Jeniffer Kanyua

(vi) Joyce Mukwandeke - equal share of the remaining

(viii) Alison Mukwairu

In summary this court do hereby confirm the grant made on 14th June, 2016 as terms of the following:-

A. L. R. MWIMBI/S.MUGUMANGO/479

1. Agnes Mukwairu M'Rinkanya -1 acre
2. Magret G. Mwiandi - 4 acres
3. Mathrice Ithiru M'Rinkanya - 0.50 acre
4. Jeniffer Kanyua - 0.50 acre
5. Joyce Mukwandeke -0.50 acre
6. Alison Mukwairu -0.50 acre

B. L.R MWIMBI/S.MUGUMANGO/458

1. Agnes Mukwairu M'Rinkanya - life interest
2. Ngige M'Aribu - 1 acre
3. Margret G. Mwiandi
4. Mathrice Ithiru M'Rinkanya
5. Jeniffer Kanyua equal share of the remainder
6. Joyce Mukwandeke
7. Alison Mukwairu

In view of the fact that this is a family matter, I shall make no order as to costs. I further direct that in order to bring this matter to an end, the Deputy Registrar of this court shall execute documents on behalf of those parties reluctant to execute transmission documents. The Land Registrar in the same breath shall dispense with the production of documents like Identity Card and PIN of those who will not co-operate in

order to bring this matter to its logical conclusion.

Dated and delivered at Chuka this 16th day of November, 2017.

R. K. LIMO

JUDGE

16/11/2017

Judgment signed, dated and delivered in the presence of Jennifer Kanyua (1st Administrator) and Mathrice Ithiru M'Rinkanya.

R.K. LIMO

JUDGE

16/11/2017