



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT CHUKA
SUCCESSION CAUSE NO. 16 OF 2015

(FORMERLY MERU SUCC. NO. 546 OF 2015 AND CHUKA SUCC CAUSE NO. 313/2012)

IN THE MATTER OF THE ESTATE OF RECHE MIRU.....DECEASED

JULIUS IRERI NYAGA.....PETITIONER

VERSUS

SILAS KIMATHI RIUNGU.....PROTESTOR

J U D G M E N T

1. Reche Miru (hereinafter “the deceased”) died in or about 1968. He left behind Mwimbi/N. Mugumango/132 as forming his estate. By a letter dated 28th August, 2012, Collins Ntwiga M’Ributhe Chief of Kirumi Location, introduced the following as the beneficiaries of the estate:-

- (a) Judith Umotho Reche- Widow
- (b) Julius Ileri Nyaga- Son
- (c) Patrick Kithinji Reche- Son
- (d) Peter NyagaReche
- (e) Agnes Ndeke Reche- Daughter in-law
- (f) Agnes Karimi Riungu- Daughter in-law

2. Pursuant thereto, on 4th October, 2012 Julius IleriNyaga and Silas Kimathi Riungu (hereinafter “the Petitioner” and “Protestor” respectively) jointly petitioned for grant of letters of Administration Intestate. The two were appointed the joint administrators of the estate on 3rd January 2013. On 3rd July, 2013, the Petitioner applied for the confirmation of the grant. In that application, whilst the Petitioner disclosed that the six (6) persons who are set out above, and who also appeared as the beneficiaries of the estate in Form No. P&A 5, survived the deceased, he proposed to distribute the only asset of the estate to himself and his co-administrator (“Protestor”) equally.

3. On 12th July, 2013, the Protestor filed an Affidavit protesting against the confirmation. He contended that as a co-administrator he had not been consulted in applying for confirmation and he had not assented

to the making of the application; that the Petitioner had misled the court that Judith Umoto Reche is a daughter of the deceased yet she is the widow. That he and the Petitioner were not able to agree on distribution. On 13th August, 2014, the Petitioner yet again filed a similar, application for confirmation to which the Objector filed an Affidavit of Protest sworn on 24th September, 2014. The Objector contended further that the estate should be distributed amongst all the survivors of the deceased; that in addition, Silas Kimathi and Aloise Ndereba Riungu, who were grandsons of the deceased be included in the distribution. That the two were dependants in that they were under the deceased's support immediately before his demise. He alleged that the intention of the Petitioner was to dispose of the asset and leave for Embu where he lives, and that he had brought prospective buyers to see the land.

4. At the hearing, the Objector told the court that he is the grandson of the deceased; that the widow of the deceased Judith Umoto is aged 96 years; that the deceased had three (3) children with Umoto namely; Genesio Riungu (deceased), Agnes Ndeke and Boniface Njagi; that the Petitioner claimed to be a son of the deceased by a different mother whom the Objector did not know. That during the lifetime of the deceased, the Petitioner did not visit him in the estate of property but upon his demise, the Petitioner showed up. Boniface Njagi died 10 years ago without leaving a wife or any child. The Objector stated that he was representing the interests of the widow. He was opposed to the proposed division and wanted all the beneficiaries to get a share.

5. On his part, the Petitioner told the court that he is the eldest son of the deceased. That he had decided that the land be divided into two (2) equal portions representing the two (2) houses of the deceased. That in that regard, he went to the chief so that the family of Umoto could provide a person with whom he would administer the estate. That the said family appointed the Objector. That however, the Objector rejected his mode of distribution. According to him, it was upon the Objector to give reasons for his objection as the Petitioner had children and brothers who were not opposed to the mode of distribution.

6. Upon both the Objector and Petitioner closing their respective cases, and not having shed more light in the dispute, the court directed that those named as beneficiaries and present in court do testify as to their respective interests. CW₁ Judith Umoto told the court that she was the widow of the deceased with whom she had three (3) children named above; that she did not know Patrick Kithinji Reche, Peter Nyaga Reche or the Petitioner. She further testified that she was aware that the deceased had another wife who had left the deceased before she (Umoto) was married; that when the said co-wife left had two (2) daughters who she had come with; that the Petitioner should not be given any land as he had another land which had been purchased by the deceased before he died. That she lives with her daughter Agnes Reche and that it was the Objector who was currently looking after her. That although aged she nevertheless wished to have a share in the estate. In cross-examination, she said that the Petitioner had planted bananas on the property with the intention of selling the land.

7. CW₂ was Patrick Reche, a brother to the Petitioner. He told the court that he hails from Embu and he knew that he is listed as a beneficiary. He indicated that he was not claiming anything from the estate and that he had no quarrel with the proposed distribution. CW₃, was Peter Nyaga Reche also a brother to the petitioner. He also told the court that he hails from Runyenjes, Embu County. That he knew that he was listed as a beneficiary but did not wish to have any share in the estate. He had no quarrel with the proposed distribution.

8. I have considered the Affidavits on record and the testimonies of the witnesses. The issues for determination are; Firstly, who are the beneficiaries of the estate of the deceased and secondly, how is the estate of the deceased to be distributed?

9. As stated above, according to the letter by the Chief of Kirumi Location, the deceased was survived by six (6) people, Judith Umoto Reche (CW₁ and widow), Julius Ileri Nyaga (Petitioner as son), Patrick Kithinji Reche (CW₂ as son), Peter Nyaga Reche (CW₃ as son), Agnes Ndeke Reche (as daughter) and Agnes Karimi Riungu (as daughter in - law). At the trial, it transpired that the Objector was a son to Agnes Karimi and the late Genesio Riungu a son to the deceased. The Objector had been appointed by CW₁ the widow to be a co-administrator because of her advanced age. She told the court when she testified that she was 100 years old.

10. From the testimonies of the witnesses, it became clear that the deceased had another wife who had left the deceased and had moved away. The Petitioner, CW₂ Patrick Kithinji Reche and CW₃ Peter Nyaga Reche never lived with the deceased during his lifetime as recollected by both the Objector and CW₁. Indeed the two told the court that the Petitioner never visited the deceased at any time during his lifetime and that he only resurfaced after the deceased had passed on. He came to claim a share of that property and that is when he commenced these proceedings. The Petitioner did not deny or rebut this evidence.

11. None of the witnesses disclosed to court the name of the deceased's first wife; it was not clear when and how she left the deceased; the court was not told where she went and /or her current status. The evidence on record which neither the Petitioner nor CW₂ nor CW₃ denied is that, the said wife left the deceased before he married CW₁. Further, the contention of the Objector and CW₁ that the Petitioner and the others were living and had settled in Embu in a property purchased by the deceased was not disputed. It was also not disputed that neither the Petitioner nor CW₂ nor CW₃ ever visited the property under dispute or the deceased during his lifetime.

12. This court's opinion therefore is that; the deceased may have settled his two houses during his lifetime. That is why no one from the first house, including the Petitioner ever visited, occupied or claimed the property now in dispute during the lifetime of the deceased. CW₂ and CW₃ were categorical that they were claiming nothing from the estate of the deceased. It is only the Petitioner who is making a claim. The basis is that he is the eldest son of the deceased. I believe that the purpose of succession cause is to settle the heirs of a deceased and by distributing what they are rightfully entitled to. If however, a deceased has already settled his heirs, a court of law will be slow to interfere with such a settlement unless there is no equity in such settlement. If there is proper settlement and there is interference, then that may become a recipe for endless wrangles within families and society which is not the purpose of the Law of Succession.

13. In the present case, the deceased seems to have settled his two houses. The Petitioner has all along settled in Embu. He only emerged after the demise of the deceased to claim half the property in which the deceased had settled the 2nd house. The court's opinion is that, the Petitioner is being motivated by other considerations other than a right to inheritance to claim a portion of the estate. He never denied that he was already settled in Embu in a property purchased by the deceased and that he had brought several prospective buyers to the property for survey with the intention of selling the same. He never disclosed how much land he was given by the deceased in Embu where he is settled. His siblings are contented by what was given to them. Accordingly, in this court's opinion, the property the subject of this succession was meant for the second house of the deceased, that of Judith Umotoh(CW₁). It would seem however that Judith Umotoh and her family did not protest when the Petitioner emerged and made a claim on the estate of the deceased. They moved along with him and went to the chief for the letter of introduction and proposed the objector as co-administrator. They allowed him to cultivate and plant bananas in a portion of the land forming the estate. They only objected when the Petitioner's appetite increased to claim half the estate. I will include him in the list of beneficiaries. The beneficiaries are therefore Judith Umotoh as the widow, Agnes Reche and the estate of the late Genesio Riungu and the Petitioner even though he only emerged after the demise of the deceased to claim a portion of the estate. This court will take into consideration that the Petitioner never bothered to visit the deceased during his lifetime.

14. The next issue is how the property should be distributed. The objector contended that the same should be distributed to the beneficiaries. CW₁ Judith Umotoh stated that notwithstanding her age, she needed a share and the same should be held by the Objector who has been looking and continues to look after her. She also told the court that her son Genesio Riungu died and his estate is under his widow Agnes Riungu. She also told the court that she wishes her daughter, Agnes Reche who lives with her also to get a share. There was no evidence that Silas Kimathi and Aloise Ndereba were dependents for them to qualify and share in the estate.

15. Accordingly, the estate is to be distributed as follows:-

a) Judith Umotho Reche and Agnes Ndeke Reche (the interest of Judith Umotho to be held by Silas Kimathi Riungu) – 0.5 Ha

b) Estate of late Genesisio Riungu to be held by Agnes Karimi Riungu- 1.22 Ha

c) Julius Ireri Nyaga - 0.5 Ha

Each party to bear his/her own costs.

It is decreed accordingly,

DATED and Delivered at Chuka this 28th day of April 2016.

A. MABEYA

JUDGE