



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
SUCCESSION CAUSE NO. 1568 OF 2009

IN THE MATTER OF THE ESTATE OF STEPHEN KIRIBA KINORO (DECEASED)

PETER KAMAU KIRIBA.....
APPLICANT

VERSUS

JOHN MUCHIRI KIRIBA..... 1ST
RESPONDENT

GEORGE NDUNGU KIRIBA.....2ND
RESPONDENT

RULING

PLEADINGS

The deceased died on 14th February 2006 as evidenced by the death certificate no. 932121.

The Local Administration wrote a letter dated 5th February 2009 and named the family of the deceased being comprised of;

1. Jane Wanjiku – widow of the deceased
2. Peter Kamau Kiriba
3. John Muchiri Kiriba
4. Charles Murathe Kiriba
5. George Ndung’u Kiriba
6. Elizabeth Njeri Manguriu
7. Mary Wanjiru Kiriba

The petition was filed on 13th July, 2009, was gazetted on 25th September 2009 and the grant was issued to Peter Kamau Kiriba, John Muchiri Kiriba and George Ndungu Kiriba as administrators of the estate of the deceased on 1st December, 2009.

On 21st November 2013 the 1st administrator Peter Kamau Kiriba sought the Courts intervention to stop the two (2) other administrators intermeddling with the deceased's estate. John Muchiri Kiriba and George Ndungu Kiriba without consultation and consents of other beneficiaries allocated themselves L.R. Ndumberi/Ting'ang'a/T.219 and George begun construction of a permanent structure as shown by annexed photographs to the application. John Kiriba leased the other half for chicken rearing and car washing business. The two (2) administrators also distributed to themselves L. R. Ndumberi/Ting'ang'a/1633 similarly without consultation with and did not obtain consents of the other beneficiaries of the deceased's estate.

The administrators filed summons for confirmation of grant on 28th March, 2014 and listed the beneficiaries of the estate, the assets that comprise of the deceased's estate and proposed mode of distribution. All the beneficiaries did not consent to the confirmation of grant application. Specifically, 1st administrator, Peter Kamau Kiriba and Elizabeth Njeri Manguriu filed their affidavits of protest on 19th March 2014 and 13th March 2015 respectively. They proposed alternative modes of distribution. John Muchiri Kiriba filed Supplementary Affidavits on 17th September 2014 and 10th December 2014. Peter Kamau Kiriba filed a further affidavit on 25th December 2014.

The 1st Administrator filed written submission on 1st February 2016 and 2nd and 3rd Administrators on 1st December 2015 on their respective positions with regard to distribution of the deceased's estate.

HEARING

The matter commenced oral hearing on 3rd March 2015 on the protests against the summons for confirmation on 28th March 2014.

PWI John Muchiri Kiriba one of the administrators who filed the summons for confirmation stated he consulted all the siblings, beneficiaries of the estate and agreed on the distribution of the deceased's estate. Except for the two (2) Objectors; Peter Kiriba and Elizabeth Njeri who did not consent and filed protests.

He proposed the mode of distribution as follows;

1. Plot No Ngaita/Thing'ang'a No. 3 Kiambu (Nyihiahwae) to be shared equally between the four (4) sons of the deceased.
2. Ndumberi/Ting'ang'a/1633 (2.67 acres) where their father lived to be divided between him and George Kiriba. They have developed the land and it has permanent structures. He started to build in 1999 when their father was alive. They have left a portion for the last child as is required by Kikuyu Customary Law to have the last child inherit the parent's home. That is George Kiriba.
3. L. R. Ndumberi/Ting'ang'a /T.129 is for Charles Murathe Kiriba, he settled in 1989 on the plot after their father allocated the 1/4 acre to him and he begun building a permanent home during his father's life. He resides in United States but his family resides in the premises where they have built a house.
4. L. R. Ndumberi/ Ting'ang'a/425 was also allocated to Charles Murathe Kiriba by the deceased in 1990.
5. L. R. Ndumberi/Ting'ang'a/T8 to be shared between John Kiriba and George Kiriba as it was allocated to them in 1990 by the deceased.
6. L. R. 10874/31 (22 acres) Thika Municipality to be shared as follows; (already part of the distribution was done during the deceased's life)

- i) 6 Acres - Peter Kiriba
- ii) 4 Acres - George Kiriba
- iii) 4 Acres - Charles Kiriba
- iv) 4 Acres - John Kiriba
- v) 3.3 Acres - remaining portion held by the deceased shall be shared equally between the daughters' of the deceased.

7. L. R. 7785/441 $\frac{3}{4}$ acre to be shared by all sons of the deceased

8. L. R. 7785/442 $\frac{1}{9}$ plot to be shared by all sons of the deceased

9. Money in the bank and shares shall be shared equally amongst all beneficiaries.

PWII Peter Kamau Kiriba the other administrator and protestor to the summons to confirmation of grant testified on 10th June 2015 and relied on the protest he filed and proposed mode of distribution as follows;

- i) L. R. No. 10874/31 – 3.3 acres in Thika Municipality to be shared by all beneficiaries equally excluding the protestor (as shown in the schedule to the affidavit of protest of 19th May, 2014).
- ii) L. R. No.7785/432 $\frac{3}{4}$ acre Nairobi equally divided amongst all beneficiaries.
- iii) L. R. No. 7785/441 $\frac{1}{9}$ acre Nairobi divided amongst all beneficiaries.
- iv) L. R. Ndumberi/Ting'ang'a/1633 to be shared equally by all sons.
- v) L. R. Ngatia/Ting'ang'a No. 3 Kiambu to be shared by all sons in equal shares
- vi) L. R. Ndumberi /Ting'ang'a/T219 to be shared by all sons in equal shares
- vii) L. R. No. Ndumberi/Ting'ang'a/425 to be shared by all sons in equal shares
- viii) Kiambu/Block 5/922 to be shared by all beneficiaries equally
- ix) Kiambu/Block 5/2759 to be shared by all beneficiaries equally
- x) L. R. Ndumberi/Ting'ang'a/T8 to be shared by all beneficiaries equally.
- xi) Shares and money in the bank shall be distributed and shared equally amongst all beneficiaries.

PWIII the 2nd protestor Elizabeth Njeri Manguriu on 4th January 2015 stated and relied on her affidavit of Protest of 13th March 2015. She opposed the mode of distribution by PWI John Kiriba and agreed with the mode of distribution of the 1stProtestor.

On the proposal for the mode of distribution she objected because the sons of the deceased took the lion's share of the properties. The Applicants of the summons for confirmation did not inform or consult the beneficiaries on the best mode of distribution. She is not contesting ancestral lands; but specifically wants a share in **L.R Ndumberi/Ting'ang'a/T8** and **L. R. No. 7785/432** Nairobi including equal share of the shares and monies in the bank accounts.

ISSUES

1. Is the proposed mode of distribution of the deceased estate attached to the summons for confirmation of grant of 28th March 2014 fair, just and equitable amongst the beneficiaries?
2. Did the deceased distribute his estate through gifts *inter vivos* or leave an oral or written Will?
3. Should the Court take into account gifts *inter vivos* in the proposed mode of distribution?
4. Should the daughters of the deceased have a share of the deceased's estate, if so what is reasonable share of the deceased's estate?

DETERMINATION

The law on distribution of the deceased's estate is governed by the **Constitution 2010 and the Law of Succession Act Cap 160 respectively**; there are contesting and conflicting versions of the fact that the deceased had distributed the estate through gifts *inter vivos* during his lifetime or he had an oral Will or not.

An oral Will shall conform to **Section 9 of Law of Succession Act Cap 160**, which provides;

No oral Will shall be valid unless;

It is made before two or more competent witnesses and the testator dies within three months from the date of making the will

This Court finds from the evidence on record specifically John Kiriba and George Kiriba versions that the deceased left a Will (written or oral) is not borne out by the evidence on record. The letter dated 13th February 1994 does not constitute a written Will as provided under **Section 11 of the Law of Succession Act Cap 160**. It reflects a meeting held by the deceased and his sons and agreement of distribution of the suit property L.R. 10874/31 Thika Municipality. He retained 3.3 acres which is subject of distribution herein.

There is no written Will on record, however there is a document letter dated 13th February, 1994 where the deceased held a meeting with his sons and distributed as gifts *intervivos* **Land Reference Number 10874/31**. The letter is attached as "JMK2" of John Muchiri Kiriba's affidavit filed on 17th September 2014.

Therefore the deceased's estate shall be distributed as an intestate estate taking into account the gifts *intervivos* as prescribed under **Section 42 of the Law of Succession Act Cap 160** which provides;

Where

“(a) an intestate has, during his lifetime or by will, paid, given or settled any property to or for the benefit of a child, grandchild or house; or

(b) property has been appointed or awarded to any child or grandchild under the provisions of Section 26 or Section 35,

that property shall be taken into account in determining the share of the net intestate estate finally accruing to the child, grandchild or house.”

The next issue to be addressed is whether the daughters of the deceased are entitled to a share of the deceased's estate? At the time of the deceased's demise the deceased had gifted land parcels to the sons and the daughters; Elizabeth Njeri Manguriu and Mary Wanjiru Kiriba were left out.

However in the summons for confirmation of grant they have been allocated land parcel L.R. 10874/31

3.3 acres to share equally, shares and money to be distributed in equal shares to all beneficiaries. Elizabeth Njeri Manguriu in her protest filed on 13th March, 2015 informed this Court as the eldest child of the deceased she took care of her parents as she is married and lives closer home. Yet she was excluded from the distribution of the estate as she has not been allocated any interest in L. R. Ndamburi/Ting'ang'a/T 8 and L. R. No. 7785/432 both commercial properties.

It is settled Law that **Article 27(1) and (3) of the Constitution 2010 stands for**

equality and benefit of the law to all persons. Secondly discrimination on the basis of race, sex, pregnancy, marital status, health status, ethnic or social origin, color, age disability, religion, conscience, belief, culture, dress, language and birth is prohibited.

Section 38 of the Law of Succession Act Cap 160 prescribes

the net estate shall subject to provisions of Sections 41 and 42 of Law of Succession Act, , or devolve upon surviving child, if there be only one be equally divided among the surviving children.

In light of the present circumstances, the deceased distributed part of his estate as gift *inter vivos* to his sons. Therefore the distribution of the net estate taking into account gift *inter vivos*, shall be equitable not equal among the children of the deceased.

DISTRIBUTION OF THE ESTATE

This Court has considered the various proposals by the two Applicant/Administrator and the two (2) Protestors. It is clear from the record that the three (3) administrators Peter Kiriba, George Kiriba and John Kiriba have carried out their statutory duties contrary to requirements of **Section 83 of the Law of Succession Act**. They have not acted in concert but at variance and the Applicants are pitted against the Protestors. They did not consult with or obtain consents from all beneficiaries. More importantly, the Applicants allocated themselves parcels of land and begun construction and exclusive use of the parcels of land before confirmation of grant. The summons for confirmation have been filed by one administrator John Kiriba supported by George Kiriba and Peter Kiriba in the protest supported by Elizabeth Manguiru.

In light of these disagreements, this Court has taken into account various concerns expressed by all parties and the distribution of the net estate shall be as follows;

1. LAND DISTRIBUTION

LAND REFERENCE 10874/31; By letter of 13th February, 1994 the deceased gifted land parcels to the sons as follows;

- | | | |
|-----------------------------|---|------------|
| i) Peter Kamau Kiriba | - | 6 Acres |
| ii) John Muchiri Kiriba | - | 4 Acres |
| iii) Charles Murathe Kiriba | - | 4 Acres |
| iv) George Ndungu'u Kiriba | - | 4 Acres |
| i) Stephen Kiriba | - | 3.66 Acres |

(deceased himself)

Therefore the land parcel was distributed during the lifetime of the deceased and there is documentary evidence to the effect as in the title above. There is contention by the other sons of the deceased, why

Peter Kamau Kiriba was allocated two (2) acres more than the other sons on the property. In his further affidavit filed on 24th January 2014 the Protestor Peter Kiriba attached receipts and copies of cheques and he confirmed that he used his own funds to have the subdivision of the land done and he facilitated the transfer of the suit property by payment of the outstanding land rates and rents.

Paragraph 14 of his affidavit shows;

- 1) 16th March 1999 Cheque Kshs. 200,000/=
- 2) 19th March, 1999 Cheque Kshs. 176,560/=
- 3) 29th July, 1999 Cheque Kshs. 38,160/=
- 4) 20th August, 1999 – Kshs. 750/=
- 5) Survey Fees Kshs. 300,000/=

The 2 Applicants/ administrators did not controvert this evidence apart from merely denying that the 1st protestor made payments. If he made payments from the deceased's funds such evidence was not produced in this Court. Therefore, it is clear the deceased allocated the 1st Protestor two (2) acres more than the other sons due to his monetary contribution. The remaining 3.66 acres of the land was held by the deceased himself until his demise. Since all sons of the deceased have a sizeable share of the land the remainder shall be distributed to the two (2) daughters of the deceased namely, Elizabeth Njeri Manguriu and Mary Wanjiru Kiriba, in equal shares.

2. **L. R. Ndumberi/Tang'ang'a/1633** is the matrimonial property/home of the deceased. John Muchiri Kiriba stated that at the family meeting of 4th August, 2014 it was agreed that Peter Kiriba was not to have a share of the said property as he had already two (2) acres more than the other siblings of the Thika property. There are no minutes of the meeting to confirm this fact nor oral evidence from any other person to confirm the issue. This is ancestral land and all the sons should have a portion of it; since Charles Murathe Kiriba is compensated from gift *inter vivos* of L. R. No Ndumberi/Ting'ang'a/T. 219 and L. R. Ndumberi/Ting'ang'a/425 (1/2 share) the said land parcel shall be distributed in the following manner; the last born of the home George Kiriba is entitled to half of the property (according to Gikuyu Customary Law the last born takes whole the parents' home). The other half shall be divided between John Kiriba and Peter Kiriba equally.

3. **L. R. 7785/432 – 1/9** share and

4. **L. R. 7785/441**; are prime properties that are allocated near Runda Estate and have high monetary value. These shall be shared amongst all the beneficiaries equally.

5. **Plot No Ngaita/Ting'ang'a No. 3 Kiambu (Nyihiahwae)** has no dispute amongst the beneficiaries and it shall be distributed equally amongst the sons of the deceased.

6. **L. R. No Ndumberi/Ting'ang'a/T. 219 (1/4 acre)** to remain with Charles Murathe Kiriba. The deceased bequeathed the land to him and he built his house in 1989.

7. **L. R. Ndumberi/Ting'ang'a/425 (1/2 share)** remains with Charles Murathe Kiriba. He was allocated the land to cultivate and he has been cultivating the land from 1990. He also forfeits his share in the matrimonial home which was shared by three (3) brothers

8. Share in **Kiambu/Block 5/922** to be shared equally by the sons of the deceased

9. Share in **Kiambu/Block 5/2759** to be shared equally by the sons of the deceased

10. **L. R. Ndumberi/Ting'ang'a/T.8** to be shared equally by all children of the deceased equally.

DISTRIBUTION OF SHARES AND MONEY

11. All shares in **Mboi Kamiti, Muranga Company, Kiambu Farmers and Traders Company Limited, Ndumberi Farmers Corporation Limited, Marigu Family Share** shall be shared equally amongst all beneficiaries.

12. All **B. A. T, Cooperative Bank, EABL, Kenya Commercial Bank, Barclays Bank, Kenya Airways and NIC shares** shall be shared equally amongst all beneficiaries.

13. All **Cash in the Bank Accounts, Kenya Commercial Bank and NIC Banks** shall be shared equally amongst all beneficiaries.

COURT ORDERS

1. The mode of distribution is based on the following factors;

i) The ancestral lands shall be shared equally amongst the sons of the deceased.

ii) The commercial plots shall be shared amongst all beneficiaries of the deceased.

iii) The deceased's portion of the L. R. 10874/31 is to the daughters exclusively as they had been left out of the gift *intervivos* of the remaining land given to the sons of the deceased

iv) The gifts *intervivos* to Charles Murathe Kiriba shall remain intact.

v) All shares and monies shall be shared equally amongst the beneficiaries as agreed.

2. The summons for confirmation of grant is confirmed in terms of distribution of the net estate of the deceased as outlined above.

3. The Protests have been heard and integrated in the mode of distribution outlined above.

4. The administrators of the deceased's estate as outlined in the grant issued on 1st December 2009 shall jointly effect distribution of the estate in terms of the orders of this Court and their statutory duty under Section 83 of Law Of Succession Act Cap 160.

5. Any aggrieved party on implementation and enforcement of these Court orders may apply to Court or exercise right to appeal.

6. Each Party to bear its own costs.

DELIVERED AND SIGNED IN OPEN COURT AT NAIROBI THIS 30TH DAY OF JUNE, 2016

M. W. MUIGAI

JUDGE