



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT KERUGOYA
PROBATE AND ADMINISTRATION CAUSE NO. 134 OF 2012
IN THE MATTER OF THE ESTATE OF THE LATE MIANO MUMU....DECEASED
AND
MUGO MIANO.....PETITIONER
VERSUS
BENSON KABABI MIANO.....PROTESTOR

JUDGMENT

1. This judgment relates to the estate of Miano Mumu who died on 26th October, 1997 domiciled at Njuku, Kirinyaga County. The petition for letters of administration was presented by MUGO MIANO who was appointed the administrator of the estate of the said Miano Mumu on 13th September, 2011 upon being issued with a grant of letters of administration. The assets comprising the estate in this cause were given as:

i. **KABARE/NJUKU/914** and

ii. **KABARE/NYANGATI/851**

2. The administrator took out summons filed on 6th July, 2012 but dated 12th July, 2011 for confirmation of grant and proposed to distribute the estate comprising the above assets as follows:

a. **KABARE/NJUKU/914** – to go to DAVID MUNENE MIANO as a whole.

b. **KABARE/NYANGATI/85** – to be shared equally among

i. Juliana Kariuko Ndambiri

ii. Virginia Muthoni Mugo

iii. Agnes Watoro Magondu

iv. Faith Ruguru Ngai

v. David Muriithi Miano

3. Benson Kababi Miano, David Munene Miano and Agnes Watoro Magondu who were listed as children to the deceased in this cause were dissatisfied with the proposed mode of distribution suggested by the protestor and filed their respective protests. However, later on David Munene Miano and Agnes Watoro Magondu vide a Notice dated 13th December, 2015 and 15th December, 2015 respectively withdrew their protests. The remaining protestor and the administrator took directions from this court that they wanted the protest to be canvassed through oral evidence.

4. In his evidence the protestor herein (Benson Kababi Miano), testified that the deceased in this cause Miano Mumu had 10 children namely:

- i. David Muriithi Miano
- ii. Faith Waruguru
- iii. Juliana Kariuko Ndambiri
- iv. Virginia Muthoni
- v. Agnes Watoro Magondu
- vi. Jane Ruguru
- vii. Benson Kababi (protestor)
- viii. David Munene Miano
- ix. Mugo Miano (the administrator)
- x. Irene Wangithi

5. On the issue of assets comprising the estate in this cause the protestor stated that the following formed the estate:

- a. **Kabare/Njuku/914** measuring approximately 3.5 acres.
- b. **Kabare/Nyangati/851** measuring around 5 acres.

He told this Court that the first property that is **KABARE/NJUKU/914** had been given to David Munene by the deceased as a gift during his lifetime and as such he had no claim over it. He however stated that the remaining property NYANGATI/851 should be divided equally among all the ten children of the deceased. He conceded under cross-examination that though they had earlier agreed as a family to have the estate distributed as per the proposed mode suggested by the administrator in this cause, he later changed his mind and that is why he wanted the estate distributed equally among the children of the deceased.

6. Mugo Miano, the administrator in this cause, told this Court that he was appointed the administrator in this cause as a result of a consensus in the family of the late Miano Mumu (deceased) that he be appointed the administrator. He agreed with the protestor on the question of the list of assets in the estate and the children to the deceased. He told this Court that his deceased father had 2 wives namely:-

- i. Sarah Wakaria (deceased)
- ii. Monicah Wambura (deceased)

He further told this Court that Sarah Wakaria (deceased) had two children with the deceased namely:-

- a. David Muriithi Miano
- b. Faith Ruguru Miano;

while Monicah Wambura (deceased) had the following children with the deceased:-

- a. Juliana Muthoni
- b. Virginia Muthoni
- c. Agnes Watoro
- d. Jane Ruguru
- e. Mbogo Miano
- f. Benson Kababi
- g. David Munene
- h. Irene Wangithi Miano

7. According to the administrator his late father subdivided his parcel of land known as **KABARE/NJUKU/45** into five portions which were registered as follows:

- i. **KABARE/NJUKU/910** measuring 3 acres.
- ii. **KABARE/NJUKU/911** measuring 3 acres.
- iii. **KABARE/NJUKU/912** measuring 3 acres
- iv. **KABARE/NJUKU/913** measuring 3 acres
- v. **KABARE/NJUKU/914** measuring 3 acres

He further added that Plot No. 910 was given to Jane Ruguru as a gift, **Plot No. 911** was given to Benson Kababi (the protestor herein) **Plot No. 912** was given to Mugo Miano (the administrator herein) **Plot NO. 913** remained with the deceased and their mother Monicah Wambura while **Plot No. 914** was given to David Munene. The administrator therefore justified his proposed mode of distribution of the remaining asset being **KABARE/NYANGATI/851** measuring approximately 5 acres stating that Juliana Kariuki, Virginia Muthoni, Agnes Watoro, and Faith Ruguru should benefit from **Plot No. 851** because they did not get any share from their father from the earlier subdivision.

I have considered the protest herein and the proposed mode of distribution of the estate of the late Miano Mumu (deceased) suggested by the administrator herein. I have noted some anomalies in the petition and the application for confirmation of grant touching on dates on when the grant herein was issued and note that the same could be a result of the parties herein filing two petitions at the same time in respect of their father Miano Mumu (deceased) and their late mother Monicah Wambura (Probate and Administration Cause No. 134 of 2012). The anomalies do not however touch on the substance of the petition and hence curable in the circumstances. The grant was issued to the administrator herein on 13th September, 2011 and not 6th July, 2011 as indicated in the application for confirmation. I also find that the application is inadvertently dated 12th July, 2011 but filed on 6th July, 2012. This however, as I said does not go into the substance of the summons for confirmation and so under **Article 159(2) (d)** of the **Constitution** I find that justice demands that I determine this protest and the cause to bring this matter to rest.

The main bone of contention by the administrator is that the protestor and all those who benefitted from gifts *intervivos* from the deceased were left out in the distribution of the estate herein. The protestor was among those who benefitted and he admitted as much. The proportion to exclude those who had earlier benefitted is well founded in law because under **Section 42** of the **Law of Succession Act Cap. 160** the law provides as follows:

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

The protestor was given 3 acres of land comprised in that property known as **KABARE/NJUKU/191** by the deceased during his lifetime. The beneficiaries proposed by the administrator in that property known as **KABARE/NYANGATI/851** are 4 and the total acreage of the parcel is 5 acres meaning that each of them will get slightly over 1 acre. This in my view makes it untenable for the protestor to even think of getting an extra share when he has 3 acres.

In the premises this Court finds no merit in the protest filed. The same is dismissed with costs because I find that the protest filed was unnecessary and vexatious. The grant issued on 13th September, 2011 is confirmed as per paragraph 4 of the affidavit of Mugo Miano sworn on 6th July, 2012. **KABARE/NJUKU/914** shall go to David Munene Miano while **KABARE/NYANGATI/851** shall be shared equally among the following children:-

- i. Juliana Kariuko Ndambiri
- ii. Virginia Muthoni Mugo
- iii. Agnes Watoro Magondu
- iv. Faith Ruguru Ngai
- v. David Muriithi Miano

Dated and delivered at Kerugoya this 16th day of June, 2016.

R. K. LIMO

JUDGE

16.6.2016

Before Hon. Justice R. Limo J.,

Court Assistant Willy Mwangi

Magee holding brief for Ithiga for petitioner present

Benson Kababi present in person

COURT: Judgment signed, dated and delivered in the open court in the presence of Magee advocate holding brief for Ithiga for Petitioner and Protestor in person.

R. K. LIMO

JUDGE

16.6.2016