



**IN THE REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MERU**

**SUCCESSION CAUSE NO. 196 OF 2014**

**IN THE MATTER OF THE ESTATE OF M'MANYARA M'TUANTHUKU (DECEASED)**

**PETER MBOGUA M'MATHUKU.....PETITIONER**

**Versus**

**FESTUS MWIRIGI M'IMANYARA..... RESPONDENT**

**RULING**

**Distribution of Estate**

[1] I have been called upon to determine a Protest to Confirmation filed by Festus Mwirigi M'Manyara on 18<sup>th</sup> October, 2013. In the affidavit of protest, the Protestor averred that the deceased left a Will in which he detailed how his estate, i.e. **LR. KIBIRICHIA/KIBIRICHIA/430** should be distributed as follows:-

- (a) *Joseph M'Imanyara (deceased) to get 3 acres to be inherited by the wife Mary Kainda, and his children.*
- (b) *Festus Mwirigito get 3 acres*
- (c) *Peter Mbugua Mathukuto get 1.50 acres*
- (d) *Nkirote M'imanyara, Nchekei M'Kirera, Mrs Nthang'a Mbui, Mrs. Gacheri M'Imanyara and Mrs. Mary Kathambi Kariuki to get 1.50 acres jointly.*

[2] He therefore proposed the distribution of the estate to be in the above terms. The protestor did not file submissions despite having been given time to do so.

[3] The Petitioner, on the other hand, in his supporting affidavit sworn on 2<sup>nd</sup> October, 2013 proposed the estate of the deceased to be distributed as follows:-

- (a) *M'Kirimania M'Imanyara – 1.8 acres*
- (b) *Peter Mbogua M'Manthuku – 1.8 acres*
- (c) *Mary Kaindia Murugu – 1.9 acres*

**(d) Gacheri M'Imanyara – 1.8 acres**

**(e) Mwingi M'Imanyara – 1.8 acres.**

[4] The Petitioner filed submissions dated 11<sup>th</sup> October, 2015 to reinforce his proposals on distribution. It is worthy of note that the Petitioner averred that although the deceased left nine (9) dependants, only six of them were to benefit from the estate of the deceased. But again he eventually provided for only five (5) of them; each to get 1.8 acres of land. The Petitioner discarded the proposal by the protestor as unfair for he had given himself 3 acres, Joseph M'Imanyara 3 acres, the petitioner to get 1.50 acres while the daughters of the deceased will get 1.50 acres jointly. He was of the view that, this being intestate estate it can only be distributed in accordance with the agreement of the parties or, in absence of such agreement of the parties, to be shared equally among all dependants. He also stated that the Protestor omitted one beneficiary called M'Kirimania M'Imanyara. On that basis, he asked the court to distribute the estate as proposed by him.

## **DETERMINATION**

### **Alleged Will**

[5] In the Protest filed on 18<sup>th</sup> October, 2013, Festus Mwirigi M'Imanyara averred that the deceased left a Will detailing how his estate should be distributed to the beneficiaries. I have scanned through the file and I have not seen any such Will. The Protester did not even annex the alleged Will in his Affidavit of Protest sworn on 17<sup>th</sup> October, 2013. Accordingly, that averment is unsupported by any document and I will treat it as such. I will now ask myself what the law says about distribution of intestate estate in such situation as this.

[5] The record shows that the deceased left no surviving spouse but the following children:

**a) Nkirote M'Kirera (daughter)**

**b) Nchekei M'Kirera (daughter)**

**c) Thanga Mbui (daughter)**

**d) M'Kirimania M'Imanyara (son)**

**e) Peter Mbogua (son)**

**f) Ntibuka Ringu (daughter)**

**g) Joseph Murugu (son) deceased**

**h) Gacheri M'Imanyara (daughter)**

**i) Mwirigi M'Imanyara (daughter)**

**j) Kathambi Mwangi (daughter)**

[6] There is no agreement between the parties on distribution. The feuds between the Parties show they cannot agree. Even their proposals on distribution are wide apart. Upon consideration of the proposal by the Protestor, it is most unfair, and is based on a purported or non-existent Will. The proposal also left out M'Kirimania M'Imanyara out of inheritance of his deceased father's estate. Similarly, although the proposal by the Petitioner seems attractive, it has left out all the daughters of the deceased except Gacheri M'Imanyara. No explanations or

lawful cause were provided on this omission. Therefore, contrary to the Petitioner's submissions, his proposal does not accord with law. I am left with no option but to fall back to the law. The appropriate guide here is Section 38 of the Laws of Succession Act which provides that:

***“Where an intestate has left a surviving child or children but no spouse, the net intestate estate shall, subject to the provision of Section 41 and 42 devolve upon the surviving child, if there be one, or be equally divided among the surviving children.”***

Following the dictates of law, I order that the estate property shall be equally divided among the surviving children of the deceased listed in paragraphs 5 of this ruling to wit;

- a) ***Nkirote M’Kirera (daughter)***
- b) ***Nchekei M’Kirera (daughter)***
- c) ***Thanga Mbui (daughter)***
- d) ***M’Kirimania M’Imanyara (son)***
- e) ***Peter Mbogua (son)***
- f) ***Ntibuka Ringu (daughter)***
- g) ***Jospeh Murugu(son) deceased***
- h) ***Gacheri M’Imanyara (daughter)***
- i) ***Mwirigi M’Imanyara (daughter)***
- j) ***Kathambi Mwangi (daughter)***

The share of the deceased son, i.e. Joseph Murugu, shall be held by Mary Kainda Murugu in her own behalf and that of the children of the deceased parent father in equal shares. Accordingly I confirm the grant issued on 19<sup>th</sup> April, 2013 in the foregoing terms.

**Dated, Delivered and Signed in Open Court at Meru this 15<sup>th</sup> Day of June, 2016**

**F. GIKONYO**

**JUDGE**