



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KERUGOYA**

**SUCCESSION CAUSE NO. 349 OF 2012**

**IN THE MATTER OF THE ESTATE OF ZAKAYO MUREITHI MUNGE (DECEASED)**

**LUCY KARIKO NJIRAINI.....PETITIONER**

**AND**

**JANE WAINOI KINYUA.....PROTESTOR**

**JUDGMENT**

1. **LUCY KARIKO NJIRAINI**, the administratrix herein took out Summons for Confirmation of Grant issued by this Court on 17<sup>th</sup> June, 2013 and made a proposal on the mode of distribution of the estate of the late **ZAKAYO MUREITHI MUNGE** and suggested that the property forming the estate, that property known as **MUTIRA/KAGUYU/305** be distributed among the following:

- |  |   |          |
|--|---|----------|
| i. Lucy Kariko Njiraini  | - | 0.465 ha |
| ii. Karima Kamenya Muriithi  | - | 0.465 ha |
| iii. Zakayo Kamenya, Peter Kariuki Kamenya and<br>Catherine Nyakio | - | 0.465 ha |
| iv. Jane Wainoi Kinyua   | - | 0.465 ha |

2. The proposal did not go down well with Jane Wainoi Kinyua who filed a protest proposing that the estate should instead be divided into 3 according to the number of children the deceased left behind.

3. The protest was canvassed before this Court through oral evidence where the Petitioner tendered her evidence in support of her preferred mode of distribution as highlighted above.

She told this Court that the deceased left behind 3 children namely:

- i. Charles Kinyua (now deceased)
- ii. Joseph Kamenya (also deceased)
- iii. Lucy Kariko (the administratrix)

She told the Court that due to the demise of her brothers their wives were to take their shares with Jane Wainoi Kinyua taking the share for the late Charles Kinyua while the two wives of the late Joseph Kamenya that is Margaret Karima and Jane Karugu respectively were to get the share for the late Joseph Kamenya.

4. The Petitioner however, added that the two wives of the late Joseph Kamenya should be given

equal share like every beneficiary of the estate arguing that that was the wish of her late father. She added that the father wished that the property forming the estate should be divided into 4 equal portions to benefit the two wives of the late Joseph Kamenya, herself and Jane Wainoi Kinyua on behalf of the late Charles Kinyua.

5. The administratrix was however, hard-pressed to prove that there was a Will written by her late father because when she petitioned for letters of administration she deposed in an affidavit that the deceased had died intestate. She told this Court at the hearing of the protest herein that she did not see the need to produce the Will when she presented the petition as they were in agreement with the protestor herein.
6. The Protestor on the other hand called her daughter, Rahab Wambura Kinyua, to speak on her behalf as she was evidently sick and could not even stand or speak audibly in Court. The witness relying on affidavit of protest filed stated that the estate should be divided into 3 and distributed among the 3 children of the deceased as that was the only fair way to share the property and that the late Joseph Kamenya should not be favoured just because he had 2 wives.
7. I have considered both proposal by the Petitioner and the Protestor. The Protestor in this case is the daughter in law to the deceased as she was married to the late son of the deceased, Charles Kinyua. There is no dispute in this cause that the deceased in this cause left 3 children surviving him. The 3 were the following:

1. Charles Kinyua Mureithi (deceased)
2. Joseph Kamenya Mureithi (deceased)
3. Lucy Kariko Njiraini

8. The law applicable to distribution of the estate of **ZAKAYO MUREITHI MUNGE** is **Law of Succession Act, Section 38** which stipulates that the property of a deceased person dying intestate and no spouse should be distributed equally among the surviving children. This Court was not told when the two sons of the deceased died but it is evident that they left behind dependants (wives and children). This Court finds that the deceased died intestate as the petition for letters of administration by the petitioner clearly indicated that there was no Will. If there was a valid Will then the Petitioner could have filed for Probate with the Will annexed but that was not the case. She deposed in an affidavit sworn on 16<sup>th</sup> November, 2012 that the deceased died intestate. It is clear from the petition for letters of administration and the oral evidence tendered in court that the deceased in this cause died intestate.
9. In the light of the above, the applicable law in succession matters in Kenya must be applied. This means that there is only one way the estate shall be distributed. This Court agrees with the Protestor in this cause as her proposal is backed by the law cited above. Consequently the estate of the late **ZAKAYO MUREITHI MUNGE** shall be divided into 3 equal parts. This Court directs that the estate herein comprised in **Land Parcel No. MUTIRA/KAGUYU/305** shall be distributed as follows:-

- i. Lucy Kariko Njiraini to get  $\frac{1}{3}$  share of the parcel.
- ii. Jane Wainoi Kinyua (on behalf of her late husband Charles Kinyua) to get  $\frac{1}{3}$  share of the parcel.
- iii. The remaining  $\frac{1}{3}$  share to be shared equally between Margare Karima and Jane Karugu (on behalf of their husband Joseph Kamenya Mureithi).

This being a family matter I make no order as to costs. In order to bring

this matter to an end the County Surveyor is directed to visit the parcel of land forming the estate and carry out survey work and show every beneficiary their respective boundaries as per the confirmed grant. The

surveyor's costs shall be shared equally among the 3 beneficiaries. It is so ordered.

***Dated and delivered at Kerugoya this 19<sup>th</sup> day of 2015.***

**R. K. LIMO**

**JUDGE**

19.6.2015

Before Hon. Justice R. Limo

Court Assistant: Willy

Lucy kariko present

Jane Wainoi present

Judgment dated, signed and delivered in the open court in the presence of Lucy Kariko and Jane Wainoi.

**R. K. LIMO**

**JUDGE**

**19.6.2015**