



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MERU
SUCCESSION CAUSE NO. 550 OF 2011

In the matter of the Estate of the late Runyenje Mbuchi alias Runyenje Ruchi (deceased)

PHARES MUTEGI NYAGA APPLICANT

Versus

EMILIO NYAGA NGUURESPONDENT/PETITIONER

R U L I N G

Distribution of estate property

[1] The court has been called upon to determine how the estate property shall be distributed among the beneficiaries. The concerned parties could not agree on distribution of the estate. The basis of court's decision is the law; and submissions of parties expressing their respective desired mode of distribution of the estate property known as **L.R. NO. KARINGANI/MUGIRIRWA/503. PHARES MUTEGI NYAGA** filed his submissions on 6/10/2015. He stated that the deceased was his grandfather while his co-petitioner **EMILIO NYAGA NGUU** is the deceased's nephew. He submitted that the other dependants and beneficiaries of the deceased were provided for by the deceased during his life time. That the deceased intended to sub-divide the above land measuring 5 acres and gave one acre to each of the 3 persons namely; (1) Phares Mutegi Nyaga; (2) Simon Rutere; and (3) Emilio Nyaga. The deceased was to keep 2 acres to himself and for his use.

[2] Phares stated further that the deceased instructed Mr. Laban Muthuri M'Mbwii to sub-divide the above estate property. The subdivision was done but Simon Rutere and Emilio Nyaga did not pay the survey fee and so these sub-divisions were not registered as required. He exhibited a mutation that had been prepared and is marked as PMN1.

[3] Phares did not stop there. He averred that he cared for and lived with his grandfather (deceased) in his old age which made the Deceased during his lifetime to give Phares the one acre he had subdivided for Phares as well as the two acres the deceased had reserved for himself. Phares stated that the deceased occupied all the three acres which he passed on to him. In the premises, Phares proposed that **L.R. No. Karingani/Mugirirwa/ 503** to be distributed as follows;

- a) Phares Mutegi Nyaga - 3 acres
- b) Simon Rutere - 1 acre
- c) Emilio Nyaga - 1 acre

Proposals by Emilio Nyaga Nguu

[4] Emilio Nyaga Nguu also filed his submissions on distribution. He filed them on 16/6/2015. He stated that he is the son of the brother of the deceased while Phares Mutegi is the son of the deceased. He stated that the deceased was survived by;

- a) Simon Rutere
- b) Phares Mutegi Nyaga, and
- c) Emilio Nyaga Nguu

[5] Emilio stated that, after careful consideration he proposed that **L.R. NO. Karingani/Mugirirwa/503** measuring 2 Ha should be distributed equally to all beneficiaries as follows;

- i) Simon Rutere - 0.67 Ha.
- ii) Phares Mutegi Nyaga - 0.67 Ha.
- iii) Emilio Nyaga Nguu - 0.67 Ha.

Emilio stated that his above proposal (1) is in accordance with the wishes of the deceased, and (2) takes into account that all the beneficiaries have other parcels of land that were given to them by the deceased.

Court's Determination of Distribution of Estate

[6] I have perused the entire file and proceedings therein. I observe that the two administrators have made varied allegations as to who took care of the deceased. Mr. Phares Mutegi says that he and his mother late Eunice Stanley took care of the deceased from the time his wife died in 1969 to 1989 when he also died. According to Phares it was because of this that the deceased entrusted him with all his documents, so that he could inherit the deceased's portion of 2 acres. He used this fact as a basis for a larger entitlement to the estate property. See supporting affidavit and supplementary affidavits by Phares.

[7] I also note that Emilio filed replying affidavits and he vehemently refuted the allegations by Phares on the care of the deceased. According to Emilio, Phares' mother was not even living on the land; she only used to visit the deceased. He also stated that the deceased never at any time set out to distribute his land herein.

[8] I have perused the record and there is nothing that shows that any of the foregoing averments were tested before the court. I will, therefore, not base my decision on the alleged care of the deceased by the parties. But, two things are not in dispute:

- (1) That the beneficiaries herein lived on the estate property; and**
- (2) That Phares and Emilio are grandson and nephew to the deceased respectively.**

Section 39(1) of the Law of Succession Act is appropriate guide here. In my understanding the grandson will rank higher or will have a superior right to inherit the estate of the deceased as against the nephew. Phares and Rutere are grandsons of the deceased. Although Emilio stated that the deceased never set out to distribute the estate in issue, he admitted one fact; that the three beneficiaries herein lived on the land in question during the lifetime of the deceased. He did not give details as to how the portion each occupies was allocated to them-which I suppose it was by the deceased because nobody has claimed the occupation was forceful or adverse to or without the consent of the deceased. Again, there is no evidence that was adduced on how much land each of the three occupied on the estate property herein. Therefore, the evidence by Phares that each of them was given one acre and the deceased left 2 acres to himself and his use bears some credibility.

[9] Now, therefore, taking all relevant matters and the applicable law into consideration the most

equitable distribution which I hereby order is as follows;

LR. NO. KARINGANI/MUGIRIRWA/503

- a) Phares Mutegi Nyaga - 2 acres**
- b) Emilio Nyaga Nguo - 1 acre**
- c) Simon Rutere - 2 acres**

It is so ordered.

Dated, Signed and Delivered in Court at Meru this 29th day of October 2015.

F. GIKONYO

JUDGE

In the presence of;

Murithi Advocate for Rimita Advocate for Emilio Nyaga

Mburugu Advocate for petitioner – Phares Mutegi

F. GIKONYO

JUDGE