



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MILIMANI
SUCCESSION CAUSE NO. 1178 OF 1997
IN THE MATTER OF THE ESTATE OF MUHORO GIKARU –(DECEASED)

RULING

1. The summons dated 11th June 2013 seeks distribution of the estate of Muhoro Gikaru who died intestate on 20th July 1966.
2. According to the letter from the Chief of Nyathuna Location, dated 5th June 1997, he was survived by Wango Muhoro, Rahab Rakeri Wanjiku, Francis Kamau Thairu, Evanson Muhoro, Peter Kamondia Gikaru and Samwel Muhoro Mbutha.
3. He had three sons – Mbutha, Gikaru and Wango. All three are now dead. Mbutha Gikaru was survived by a widow, Rahab Rakeri Wanjiku, and a son, Muhoro Mbutha. Gikaru was survived by Evanson Muhoro Gikaru, Francis Kamau Thairu and Peter Kamondia. Wango Muhoro was survived by James Muhoro Wango.
4. He died possessed of only one asset, being Kabete/Nyathuna/201.
5. The application for confirmation of the grant is by Rahab Rakeri Wanjiku. She proposes that the said property be divided between the three sons of the deceased so that Mbutha Muhoro, her husband, takes 1.513 hectares, while Gikaru Muhoro and Wango Muhoro take 1.32 hectares between themselves which they should share equally. Ultimately, the estate would devolve as follows:-
 - (a) Rakeri Wanjiku -1.513 hectares
 - (b) Evanson Muhoro
 - (c) James Wango 1.32 hectares
6. Evanson Muhoro swore an affidavit of protest on 25th September 2013 and filed it in court on 26th September 2013. He does not propose any form of distribution but merely identifies the heirs.
7. Counsel for the parties addressed me on 25th November 2013. Miss. Kinyanjui advocated for the distribution proposed in the affidavit of Rahab Rakeri Wanjiku. She urges that that is what is on the ground, and that is how the deceased had distributed his property before he died. Mr. Kamonde's contention was that the deceased had not distributed his estate before he died. He proposes that

customary law be followed, the estate should be divided equally.

8. The deceased died in 1966. This was long before the Law of Succession Act came into force. The Kikuyu customary law of succession on distribution applies by virtue of *Section 2(2)* by the Law of Succession Act.

9. Kikuyu customary law on distribution of intestate estates is notorious. It has been stated in numerous decisions both of the High Court and the Court of Appeal, such *Kanyi vs Muthiora* (1984) KLR 712. The land is divided equally among the sons, except that the eldest son may receive a slightly larger share. The principle is equal distribution.

10. Distribution *inter vivos* is recognized under Kikuyu Customary Law. The practice is common where the deceased is an elderly person at the time of distribution. In *Karanja vs Karanja* (1983) KLR 209, it was said that it would take the form, where and when it happens, of the deceased allocating to each son his share of land upon the son getting married.

11. It is alleged in this case that the deceased had shared out his land during his lifetime. No evidence was led on this. The deceased died in 1966. That is a long time ago. The age at which he died was not disclosed and I have not seen a copy of his death certificate from the record before me. It was also not demonstrated whether any of his sons were married at the point of his death in 1966. The allegation that he had shared out his land during lifetime can only then be taken with a pinch of salt.

12. The basic principle underlying division of property between the sons of an intestate was equality. In this case it is proposed that the house of the first son of the deceased takes a share larger than half of what the other sons are to take. That is unconscionable and contrary to the spirit of Kikuyu Customary Law on the matter.

13. In view of all I have said above, I will make the following final orders:-

- a. That I hereby confirm the grant made to Rahab Rakeri Wanjiku and Evanson Muhoro on 8th May 2013;
- b. That the asset Kabeti/Nyathuna/201 shall be divided equally between the three sons of the deceased so that –
 - i. Rahab Rakeri Wanjiku Mbutha and Muhoro Mbutha shall jointly take the share of the son of the deceased called Mbutha Muhoro (deceased),
 - ii. Evanson Muhoro Gikaru, Francis Kamau Thairu and Peter Kamondia Gikaru shall equally take the share of the son of the deceased called Gikaru Muhoro (deceased); and
 - iii. James Muhoro Wango shall take the share of the son of the deceased called Wango Muhoro (deceased); and
- c. That costs of the application shall be in the cause.

DATED, SIGNED and DELIVERED at NAIROBI this 23rd DAY OF May 2014.

W. MUSYOKA

JUDGE

In the presence of Ms. Mburu advocate for the applicant.

