



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

SUCCESSION CAUSE NO. 575 OF 2011

IN THE MATTER OF THE ESTATE OF M'MURITHI M'MUTUNGI Alias MURIITHI

MUTUNGI ALIAS MISHECK MURITHI MUTUNGI.....(DECEASED)

STEPHEN GITONGA M'MURITHI.....PETITIONER

VERSUS

FAITH NGIRA MURITHI.....OBJECTOR

J U D G M E N T

1. The petitioner STEPHEN MBAYA M'IKIUGU petitioned for the grant of letters of administration intestate to the deceased estate with consent to the making of grant of all beneficiaries as per consent filed on 4th October, 2011. The petitioner listed all the deceased heirs including the two protestors namely Faith Ngira Murithi and Daniel Mbichi Muriithi. The grant of letters of administration intestate was issued to petitioner Stephen Gitonga M'Murithi on 21st March, 2011.

2. By application for confirmation of the grant dated 29th January, 2013 the petitioner sought to have the grant confirmed and with it he filed consent to the mode of distribution of the estate and confirmation of the grant duly signed by all beneficiaries including the protestors and the petitioner, however before confirmation of the grant Faith Ngira Murithi wrote a letter to the Deputy Registrar dated 11th April, 2013 stating that it was their father's wish that all his beneficiaries get equal shares to his estate but contrary to their deceased father the petitioner discriminated against her by allocating her 1 acre to share with her mother Naomi Mberenya Murithi and her sister LUCY GACHERI MURITHI in joint ownership.

3. Subsequently FAITH NGIRA MURITHI filed affidavit of protest against the confirmation of grant dated 29th January, 2013 proposing her intended mode of distribution equally in respect of Abogothuchi/Katheri/1220 and 1503 and further proposing that the remaining 1 acre be shared to the deceased married daughters and the East Africa Breweries shares be shared by the petitioner and Peter Kimathi. Mr Daniel Mbichi Murithi also filed letter of protest dated 24th March, 2014 supporting Faith Ngira Murithi's protest. He later filed affidavit of protest dated 29th April, 2014 agreeing with the petitioner on the deceased dependants but opposed the petitioner's scheme of distribution on grounds that all family members were not involved in deciding on mode of distribution and termed the proposed distribution as unfair. The petitioner on the other hand filed a different mode of distribution dated 17th February, 2014 as compared with the one accompanying the application for confirmation of grant dated 27th January, 2013.

4. On 26th March, 2014 court directed that the protest be determined by way of viva voce evidence. The protestors gave evidence as OW1 and OW2 respectively and called no witness whereas the petitioner gave evidence and as PW1 called no witness.

5. The protestors case is that the deceased died on 4th June, 2004 and was survived by 13 children as listed by the petitioner and one widow. That the deceased assets were Abothuguchi/Katheri/1590, 1220 and 1503 and shares with E.A Breweries Ltd. The protestors objected to mode of distribution proposed by the petitioner as it is unfair to 1st protestor. That in spite of taking the matter to Chief and family members no solution was arrived at. The 1st objector also averred that she was not involved in subdivision of the estate. The 1st protestor prayed that subdivision be as per her scheme of distribution insisting that as she is not married she wants to be treated equally to her brother's on issue of distribution. She stated as her other sisters are married and comfortable they should be given 1 acre. On EA Breweries shares she contended that the same should go to Stephen Gitonga and Peter Kimathi. On plot at Katheri market she proposed the same be sold and proceeds be shared. She prayed her share on the land be on where she has coffee and her house. She prayed that the 2nd protestor be appointed as 2nd petitioner as she has no confidence in the petitioner. The 1st protestor denied that plot NO.1590 at Katheri Market was shared by the deceased. She denied document shown to her terming them as fake.

6. OW2 Daniel Mbichi Murithi brother to the petitioner and 1st protestor testified that their father during his lifetime called them and told them upon his death to share the land equally amongst his sons and 2 daughters. He averred that following the death of their father the petitioner and other brothers shared the land to the deceased sons only overlooking the 1st protestor and other sisters to which he objected to but his brothers went on and shared the land contrary to the deceased wishes as they feared by including 1st protestor and others their shares would be too small. The petitioner and his other brothers offered to give 1 acre to all their sisters including the 1st protestor who is unmarried and has her own children. They gave 1 acre to Lucy and Faith and subdivided it into equal portions but did not give any portion to the other 6 sisters. The 1st protestor fenced her portion but the fence was uprooted by the 5 brothers claiming the land was not hers. The chief was unable to solve the matter as 1st protestor insisted on equal share. He concluded by supporting 1st protestor's mode of distribution in respect of land parcel No. 1220, 1503, and that the 6 sisters to get 1 acre. On EA breweries shares he supported 1st objector's proposal.

7. The petitioner Stephen Gitonga M'Murithi agreed that the protestors are his sister and brother respectively. He also agreed on the deceased assets as mentioned by the protestors. He also agreed on the deceased dependants. He averred that the sons met in absence of the sisters and shared the deceased land into 7 portions and engaged a surveyor to subdivide the land. That each of the 6 sons got 1.6 acres and preserved 1 acre for 1st protestor and their mother so that she gets ½ an acre so that the 1st protestor can occupy the same upon the death of their mother. That when 1st protestor fenced the portion the brothers uprooted her fence as the land was not allocated to her but their mother. That the 1st protestor reported to the chief but petitioner sent one of their brothers to inform the Chief they were willing to discuss the matter at home and report on their agreement. The petitioner averred that he petitioned for the grant with consent of all beneficiaries and that the beneficiaries agreed on confirmation of the grant, however 1st protestor objected to the mode of distribution. The petitioner agreed the 1st protestor was not involved in subdivision of the land and that the deceased never said land be shared only amongst his sons. He withdrew his scheme of distribution and prayed that the land be shared equally amongst all the children of the deceased irrespective of their sex and marital status.

8. I have carefully analyzed the protestors evidence, have perused their affidavits of protest and the petitioner's application for confirmation of grant, his two affidavits on mode of distribution and his evidence and the law relating to distribution of a deceased estate. The issue for determination is which of the mode of distribution is fair, equitable and justifiable as regards distribution of the deceased estate amongst his dependants.

9. In this case there is no dispute as to who are the deceased dependants and as to what comprises of the

deceased assets save on the mode of distribution. The 1st protestor seeks equal distribution and is supported by the 2nd protestor save as regards the married daughters and E.A Breweries shares. The petitioner has in his evidence withdrawn his scheme of distribution and prayed the estate be shared equally amongst all beneficiaries.

10. I have carefully considered the parties proposals and I find that the parties are to a great extent in agreement with the mode of distribution proposed by the 1st protestor. I find the proposal by 1st protestor to be reasonable, equitable, fair and catering for all beneficiaries and also taking into account that the married sisters are comfortable where they are married and as such should get lesser share than the others. This is supported by OW2 and after all none of the married sisters of the parties herein raised any objection to 1st protestor's mode of distribution.

11. The petitioner contention that Abothuguchi/Katheri/1590 was allocated and transferred to the sons was not proved by evidence. The purported consent relied upon by the petitioner dated 6/2/1997 is silent as to the proposal of subdivision and whether the plot was being transferred and if so to who. The petitioner contention that the same was being transferred to the sons is unproved and cannot be entertained. The property is part of the deceased estate and should be subjected to distribution like any other properties.

xii. The upshot is that the protestors protests succeeds and is therefore allowed. I therefore distribute the deceased estate as follows: _

i. Abothuguchi/Katheri/1220

- a. Patrick Kiriinya Murithi - 1.067 acres**
- b. Daniel Mbichi Murithi - 1.067 acres**
- c. Julius Mutwiri Meshack - 1.067 acres**
- d. Naomi Mberenya Murithi - 1.067 acres**
- e. Faith Ngira Murithi - 1.067 acres**
- f. Lucy Gacheri Murithi - 1.067 acres.**

ii. Abothuguchi/Katheri/1503

- a. Stephen Gitonga Murithi - 1.1 acres**
- b. Francis Kithinji Murithi - 1.1 acres**
- c. Peter Kimathi - 1.1. acres**

d.

i. Agnes Josephine Karegi

ii. Polly Mwari Mwebia

iii. Grace Gakii Murithi 1 acre

iv. Winfred Gatwiri M jointly

v. Florence Kananu Kinoti in equal

vi. *Mary Wanja Mugambi* shares

iii. *East African Breweries Shares to:*

ii. *Stephen Gitonga jointly in equal shares.*

iii. *Peter Kimathi*

iv. *Abothuguchi/Katheri/1590 to be sold to any family member or an outsider and proceeds shared amongst:*

I. *Patrick Kiriinya Murithi*

II. *Daniel Mbichi Murithi*

III. *Julius Mutwiri Misheck*

IV. *Naomi Mberenya Murithi* in equal shares

V. *Faith Ngira Murithi*

VI. *Lucy Gacheri Murithi* shares

VII. *Stephen Gitonga Murithi*

VIII. *Francis Kithinji Murithi*

IX. *Peter Kimathi*

Each party to bear its own costs as all are brothers and a sister.

DATED, SIGNED AND DELIVERED AT MERU THIS 30TH DAY OF OCTOBER, 2014.

J. A. MAKAU

JUDGE

DELIVERED IN OPEN COURT IN THE PRESENCE OF:

1. Petitioner in person- present

1st protestor in person – present

2nd protestor in person – present.

J. A. MAKAU

JUDGE