



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

SUCCESSION CAUSE NO. 609 OF 2012

GLADYS KAJUJU MBOGORI.....PETITIONER/APPLICANT

ARTHUR MBOGORI.....1ST PROTESTOR

The petitioner GLADYS KAJUJU MBOGORI through a petition for letters of administration intestate of the estate of STANELY MBOGORI M'THURANIRA Alias STANELY MBOGORI THURANIRA Alias STANLEY MBOGORI dated 29th September, 2012 sought to be issued with letters of administration intestate of the deceased estate. The petitioner was subsequently issued with grant of letters of administration intestate to the deceased estate on 12th February, 2013.

3. The two protesters filed affidavit of protest to the distribution of the deceased estate as proposed by the petitioner. The protestors alleged the succession cause was filed secretly and that they did not sign the consent to the making of the grant or to the confirmation of the grant. They averred that their signatures were forged and urged the court to investigate the matter. The protestors though having raised issues for which a grant can be annulled or revoked did not pursue that line by filing summons for revocation of the grant under Section 76 of the Law of Succession Act but instead opted to oppose the petitioner's proposal of the distribution of the deceased estate, preferring to put in their own scheme of distribution of all the deceased estate.
5. In the instant cause there is no dispute as to the deceased beneficiaries being:-
 1. ***Gladys Kajuju Mbogori;***
 2. ***Kenneth Mwenda Mbogori***
 3. ***Martin Gikunda Mbogori***
 4. ***Arthur Kimathi Mbogori***
 5. ***Catherine Kanini Wambua***
 6. ***Newton Mutwiri Mbogori***
6. 3776, Ntima/Nthimbiri/428; Kajiado/Kaptuliel North/10732 half share which the petitioner denies belongs to the deceased; plot Block 11/252 Meru Municipality, Plot No. Ciothirai Market(Imenti North District) and Plot 26A Giaki Market/Imenti North District.
8. The petitioner produced marriage certificate exhibit P1 confirming she was married to the deceased on 10th March, 1962. She confirmed the deceased children are five as stated by the protestors and their witnesses. PW1 confirmed that she brought up the two protestors after they were brought to her husband. She asked the court to confirm her mode of distribution dated 22/10/2013 as she strongly objected to the protestors proposals on the ground that it had not catered for the deceased daughter Catherine Karimi who is married and she has no land where she is married. That she is a tenant at Salama Market, in Makueni County. She added the plot purported to have been given to her; that is

Kajiado/Kaptuliel-North/10732 is not a property of the deceased but had been gifted to her by Professor Mutwiri Arimi because she had been staying at his place. The Professor had said on his death the petitioner should get the plot but for fear of breaking her relation with her late husband she had it registered in her joint name with her husband. Petitioner produced Exhibit P2 (a),(b) and (c) in support of the registration of the property. She further urged the court to consider the value of the land at Nthimbiri is higher than Giaki pointing out an acre at Nthimbiri goes at Kshs.1.5 million while land at Giaki is Kshs.300,000/- an acre. She urged the court to consider that the 1st protestor was given a tractor and powersaw as well as machines valued at Kshs.100,000/- and dowry was paid for him during his marriage at Kshs.70,000/-. That dowry was also paid on behalf of Kenneth Mwenda for Kshs.70,000/- while other sons have not benefitted on payment of dowry for their wives. PW2 son to the petitioner confirmed the deceased beneficiaries and stated he does not know much about the deceased properties. He however confirmed the deceased shared his land at Giaki amongst himself, Martin Gikunda and Kimathi stating the other properties should go to the petitioner and other beneficiaries who had not been given anything namely Catherine Karimi, and Mutwiri. He stated he was not aware whether Silas Gitonga was survived by a child but hears that there is a child in Eldoret.

9. **LAND PARCEL NYAKI/GIAKI/327**

LAND PARCEL NO. NYAKI/GIAKI/2151

NYAKI/GIAKI/KIBURINE/289

Kenneth Mwenda Mbogori - 3 acres

- **Martin Gikunda Mbogori -3 acres.**
- The petitioner proposes to get the whole of the land whereas the protestor's proposal is to have it shared amongst the 4 sons. The 1st protestor sought to have 3 acres. I have considered that all beneficiaries have equal rights and considering both proposals I will have all deceased five (5) children share the land equally with the petitioner.
 5. The petitioner proposals is to have the whole land go to the 1st protestor whereas the 1st protestor proposal is to have 2.50 acres to himself and the petitioner to enjoy stay on land for her life time. I have considered both proposals and I find the proposal by the protestors to be fair, reasonable, and equitable and would approve the protestors proposal.
 6. The petitioner's proposal is to get the whole of the land whereas the protestors propose the same goes to Catherine K. Mbogori. PW1 gave evidence stating the property did not belong to the deceased, however the document she produced show the same is jointly registered as her property and the deceased. The registration is a prima facie proof the deceased owned half share. She even stated the same had been gifted to Catherine Karimi Mbogori by protestor Arimi who had stated upon his death the same should go to her. In view of the foregoing the petitioner is entitled to her half share and the other share should go to Catherine Karimi Mbogori.
 7. Both the petitioner and the protestors are in agreement the property should go to GLADYS KAJUJU MBOGORI. I accordingly award the same to GLADYS KAJUJU MBOGORI
 8. The petitioner's proposal is to have the same given to her whereas the protestors propose it to be shared amongst all sons only. I have considered the fact that the 1st protestor was given a tractor, power saw and machines by the deceased which he did not dispute which property has got to be taken into account in distribution of the deceased estate.

42. Where-

(b) property has been appointed or awarded to any child or grandchild under the provisions of section 26 or section 35, that property shall be taken into account in determining the share of the

I have taken that fact into account and in the interest of justice and being fair to all the

deceased beneficiaries I am of the view that the 1st protestor should not share this property with other beneficiaries. I will therefore award this property jointly in equal shares amongst the following:

The petitioner proposed the same to be awarded to Martin Mbogori whereas the protestors proposed the same to be given to the 4 sons. I have considered the two proposals and in the interest of justice I am of the view that by awarding the said plot to all sons of the deceased would be fair and reasonable. In view of the fact that no other beneficiary is seeking share of the same. The same shall therefore be shared as per protestor's proposals.

1. **Gladys Kajuju Mbogori**
2. **Catherine Karimi Mbogori**

10.DATED, SIGNED AND DELIVERED AT MERU THIS 19TH DAY OF NOVEMBER, 2014.

JUDGE

1. The 1st protestor in person – present

3. The 3rd petitioner in person – present

JUDGE