



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYERI

SUCCESSION CAUSE NO.399 OF 2009

IN THE MATTER OF THE ESTATE OF MURAGURI MUTA

alias MURAGURI s/o MUTA (DECEASED)

HANNA NJOKI WATUMA.....PETITIONER

versus

SUSAN GATHONI MURAGURI.....1ST PROTESTOR

WANGARI MURAGURI.....2ND PROTESTOR

JANE WAIGUMO.....3RD PROTESTOR

RULING

A grant of Letters of Administration intestate in respect of the **Estate of Muraguri Muta alias Muraguri son of Muta**, deceased was on 23rd July, 2010 issued jointly to **Hanna Njoki Watuma**, hereinafter referred to as the Petitioner and one **Susan Gathoni Muraguri**, one of the Protestors herein. The Petitioner applied for the aforesaid grant to be confirmed vide the Summons for Confirmation of Grant dated 25th November, 2010. The summons is supported by the affidavit of the Petitioner. Susan Gathoni Muraguri, Mary Wangari Muraguri and Jane Nyaigumo Muraguri, being the 1st, 2nd and 3rd Protestors filed a joint affidavit of Protest to oppose the summons. When the summons came up for hearing, learned counsels appearing in this cause recorded a Consent Order to have the dispute disposed of by the affidavit evidence and by written submissions.

I have considered the grounds set out on the face of the summons plus the facts deponed in affidavits filed in support and against the summons together with the rival submissions. The late Muraguri Muta alias Muraguri son of Muta passed away on 26th November, 1976. The deceased was married to three wives who predeceased him. He owned the parcel of land known as **LR No. Thegenge/Ihithe/214**. In the summons for confirmation of grant, the Petitioner proposed for the aforesaid asset to be shared as follows:

- ***Hanna Njoki Watuma - 2.1 acres***
- ***Joel Muta Gichuki - 2.1 acres***

to hold in trust for himself, Kiburu

Gichuki, Muhandi Gichuki and King'ori

Gichuki, the family of the late Isaac

Gichuki Muraguri, deceased.

- *Susan Gathoni - 1.05 acres.*
- *Mary Wangari Muraguri - 1.05 acres*
- *Jane Waigumo Muraguri - 1.05 acres*
- *Dancun Ndegwa Wothaya - 1.05 acres*

(in place of Eunice Wothaya, deceased).

In the affidavit of protest, it is averred that though Jedidah Nyaguthii Muraguri, deceased had no children, the share entitled to her house should go to Susan Gathoni Muraguri the 1st Protestor, the person who took care of her. The 1st Protestor claimed that she and her Co-Protestors were settled on the portion occupied by the late Jedidah Nyaguthii Muraguri during the lifetime of the deceased. The protestors proposed for the land to be shared as follows:

- *Hanna Njoki Watuma - 1.4 acres.*
- *Joel Muta Gichuki - 1.4 acres.*

in trust for himself,

Kabiru Gichuki, Muhandi Gichuki

And King'ori Gichuki.

- *Susan Gathoni Muraguri - 1.75 acres.*
- *Mary Wangari Muraguri - 1.75 acres.*
- *Jane Nyaigumo Muraguri - 1.75 acres.*
- *Duncan Ndegwa Wothaya - 1.75 acres.*

Hanna Wanjiru, the deceased's 2nd widow while the Petitioner and one Joel Muta Gichuki are children of Ruth Wanjiku, the deceased's first widow. The 1st and 3rd Protestors main contention is that they have constructed on the portion occupied by the late Jedidah Nyaguthii Muraguri. They claimed they took care of the late Jedidah Nyaguthii hence the children of the 2nd house should inherit what was due for the house of the late Jedidah Nyaguthii Muraguri. The Petitioner denied the Protestors' allegation and stated that the Protestors only began to move into occupation of the 3rd widow's portion after this cause was filed. It is the Petitioner's submission that the Protestors' protest is motivated by selfishness. According to Mr. Wachira, learned advocate for the Petitioner, the **Law of Succession Act** does not apply to this estate under **Section 2(2)** of the **Law of Succession Act**. According to him, the applicable law in distributing the estate is the customs of the deceased. According to the Kikuyu Customary Law, the estate should be distributed according to the 'houses'. According to the deceased's customs, the wife who has no issue is not considered as a house, hence in the circumstances of this cause the estate will be considered as comprised of two houses. It is the Petitioner's submission that her proposal is the fairest form of distribution. The protestors are of the view that the estate should be distributed in accordance with the provisions of **Section 40(1)** of the **Law of Succession Act** which provides that intestate estates of a polygamous man should be divided among the houses according to the number of children. There is no doubt that the deceased died before the **Law of Succession** came into being hence the applicable law is

the deceased's customs which in this case is the Kikuyu Customary Law – which dictates that the deceased's estate be distributed according to the houses. According to the Kikuyu customs, a wife who dies without an issue is not considered a house. The barren wife is entitled to life interest which terminates upon her death. None of the deceased's wives is alive hence the children should inherit their mother's entitlement. The sticky issue which must be sorted out is the averment that the 1st and 3rd Protestors took care of the late Jedidah Nyaguthii Muraguri. They claim they have even taken possession of the portion she used to occupy and plough tea. Let me begin by stating that the late Jedidah Nyaguthii Muraguri having had no issue only had a life interest which lapsed upon her death. I am convinced the Petitioner's mode of distribution is a fair method which is in accordance with the customs of the deceased's tribe. There is no evidence that the late Jedidah Nyaguthii Muraguri, bequeath her entitlement to the Protestors *interviros* in appreciation of their care for her. For the above reasons, I find no merit in the protest. I dismiss the Protest and order that the grant to be confirmed in terms of the Petitioner's schedule of distribution. Since the dispute involves members of the same family, I direct each party to bear his or her own costs.

Dated and delivered this 27th day of April 2012.

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J. K. SERGON

JUDGE

In open court in the presence of Mr. Wachira for the Petitioner and Mr. Kiminda for the Protestors