



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MERU
SUCCESSION CAUSE 119 OF 2005

IN THE MATTER OF THE ESTATE OF M'MUGAMBI M'MBWIRIA-DECEASED.

LESIT, J.

EVANGELINE KIBURO MUGAMBI.....PETITIONER

VERSUS

CHARLES GIKUNDA MUGAMBI

AYUB GATOBU MUGAMBI

JOYCE NAITORE MUGAMBI

GEDION KIMATHI MUGAMBI.....APPLICANTS

RULING

The application is a chamber summons dated 16th February 2012. It has been brought under Rules 49 and 73 of the P & A Rules. The applicants seek orders 2, 3 and 4 of the application namely:-

- 1.THAT this Honourable court be pleased to issue orders of inhibition to prevent the registration of any dealings with L.R.NO. ABOOTHUGUCHI/GITHONGO/710 and 764 pending the hearing and determination of this application.**
- 2.THAT this Honourable court be pleased to set aside review and stay the implementation of the court order dated 1/2/2012 and all subsequent orders thereof pending the hearing and determination of this application.**
- 3.THAT this honourable court be pleased to issue orders that the estate of the deceased be distributed as per the certificate of confirmation of grant of letters of administration issued by the court on 5th February 2007.**

The grounds for the application are on the face of the application which are:-

- 1.THAT the Order dated 1/2/2012 was obtained exparte without any service of the notice or the application to the applicants.**
- 2.THAT the order dated 1/2/2012 amounts to fraud and the same was obtained through secrecy on the part of the petitioner.**

3.THAT a stranger is being preferred to get a share of the estate instead of the rightful beneficiaries of the estate.

4.THAT the applicants will suffer irreparable costs and damage if the estate is distributed as per the further rectified grant.

5.THAT there are sufficient grounds to review the order of 1/2/2012.

The application is supported by an affidavit by the 4th April to have considered the contents of same.

The application is opposed. The petitioner has filed a reply affidavit dated 17th April 2012. I have considered it.

I brief facts of these succession cause is that the limited letters of Adiem was confirmed by the court on 2nd October, 2006 and issued on 5th September 2007. Thereafter the petitioner brought an application dated 14th September, 2011 for rectification of grant and the same was granted on 1st February 2012. The order rectifying the grant is the subject of the current application.

The applicants are the sons and daughters of the deceased. The deceased's wife is the petitioner.

The applicants contend that the petitioner did not serve either of them with the application for the rectification.

The applicants were represented by Mr. Omari. In his submissions counsel urged that there was only one bone of contention which is a grandson of the petitioner to whom she wants to give a portion of the estate of the deceased equal to what her sons will be getting. The mother of the grandson is married and she left her said son with her parents. The other siblings are opposed to the petitioner's attempt to give equal portion of land to the grandson as the sons of the deceased will get.

Mr. Omari submitted that attempts to reconcile he petitioner and applicants proved impossible as the petitioner was adamant to distribute the estate as she has proposed.

The petitioner in her submissions stated that Peter Mutwiri is her grandson. That he has no father and his mother is married and that in those circumstances he's like a son to her and must share like her son.

Both parties have filed affidavits on the mode of distribution they suggest. Before I consider them let me demonstrate how the rectification sought by the petitioner changed the original grant.

In the confirmed grant of 11th October, 2006 the beneficiaries got following shares from **L.R.NO. ABOTHUGUCHI/MRIENE/710**

Ayub Gatobu Mugambi 1 ½ acres

Charles Gikunda Mugambi ½ acres

Gideon Kimathi Mugambi ½ acres

Evangline Kiburo Mugambi and Ayub Gatobu Mugambi 1 acre jointly

Following the rectification the shares changed to the following:-

1. One acre out of the land Parcel No. L.R.ABOTHUGUCHI/GITHONGO/710 be shared equally between following:-

a. Evangline Kiburo Mugambi

- b. Joyce Naitore Mugambi**
- c. Salome Ngugi Mugambi**
- d. Beatrice Mwendwa**
- e. The following to get one acre out of same parcel of land.**

Charles Gikunda Mugambi

2. L.R.ABOTHUGUCHI/GITHONGO/764 to Peter Mutwiri Mugambi wholly.

In the petitioner's filed affidavit the suggested mode of distribution is as the follows:

1. L.R.NO. ABOTHUGUCHI/GITHONGO/764 be given to Mary Mbuthu Mugambi wholly.

2.L.R.NO. ABOTHUGUCHI/GITHONGO/710 be shared equally between the following beneficiaries (@ 0.65 acres)

- a. Evangline Kiburo Mugambi**
- b. Charles Gikunda Mugambi**
- c. Joyce Naitore Mugambi**
- d. Salome Ngugi Mutwiri**
- e. Beatrice Mwendwa Mugambi**
- f. Ayub Gatobu Mugambi**
- g. Gidion Kimathi Mugambi**

The applicants suggested mode of distribution is as follows:

1.L.R.NO. ABOTHUGUCHI/GITHONGO/764 measuring 1.4 acres be shared equally by:

- a. Mary Mbuthu mugambi**
- b. Joyce Naitore Mugmbi**
- c. Salome Ngugi Mugambi**
- d. Beatrice Mwendwa Mugambi**

2. L.R.NO. ABOTHUGUCHI/GITHONGO/710 measuring 4.6 acres be shared by:

- a. Evangline Kiburo Mugambi - 1.1 acres**
- b. Charles Gikunda Mugambi - 1 ½ acres**
- c. Ayub Gatobu Mugambi - 1 ½ acres**
- d. Gidion Kimathi Mugambi - ½ acres**

the principle here is that the grandson of the deceased cannot be treated the same way as the sons of the deceased, unless the other beneficiaries are agreeable or unless the deceased himself made such expression before he died. The grandson can only share his mother's share of the devolved estate of the deceased.

The suggested mode of distribution by the Petitioner goes against the principle grain and cannot be

allowed since all the beneficiaries have opposed it, and since the deceased never left any directions to of such nature. That being the case, in order to ensure a fair and equitable distribution of the deceased estate I will order that the mode of distribution be made in the following manner :

1. L.R.NO. ABOTHUGUCHI/GITHONGO/764 measuring 1.4 acres be shared equally by:

- a. Mary Mbuthu mugambi**
- b. Joyce Naitore Mugambi**
- c. Salome Ngugi Mugambi**
- d. Beatrice Mwendwa Mugambi**

2. L.R.NO. ABOTHUGUCHI/GITHONGO/710 measuring 4.6 acres be shared by:

- a. Evangline Kiburo Mugambi - 1.1 acres**
- b. Charles Gikunda Mugambi - 1 ½ acres**
- c. Ayub Gatobu Mugambi - 1 ½ acres**
- d. Gidion Kimathi Mugambi - ½ acres**

DATED, SIGNED AND DELIVERED AT MERU THIS 2ND DAY OF AUGUST, 2012.

J. LESIIT

JUDGE