



**REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA  
AT MERU  
SUCCESSION CAUSE NO. 119 OF 2003**

**IN THE MATTER OF THE ESTATE OF M’MIRITI M’ATUNE (DECEASED)**

**NKIROTE M’MIRITI ..... PETITIONER**

**VERSUS**

**FRANCIS KITHINJI ..... OBJECTOR**

**JUDGMENT**

A grant was issued on 10.2.2006 in the names of Nkirote M’Miriti wife of the deceased and Francis Kithinji M’Miriti. Nkirote petitioned for grant of letters of administration intestate on 9.4.2006. In the petition the following were shown as surviving the deceased.

- Nkirote M’Miriti - widow
- Milliam Ncece – daughter (married)
- Esther Gaceri “ “
- Mary Kanana “ “
- Priscilla Kithira “ “
- Stella Kagure “ “
- Francis Kithinji Son

A grant was issued to Nkirote on 19.5.2003. Her son Kithinji by an application dated 6.1.2004 sought leave to file an objection to the issuance of the grant out of time. The basis upon which he sought to object was because he was the only son of the deceased and as he stated that the deceased before his death had told the clan elders that he Kithinji would be the one in charge of his estate. Kithinji father stated that since his mother Nkirote was elderly she was not a fit person to be issued with the grant. Nkirote in response deponed that she had no medical condition which could prevent her from administering the estate. She further deponed that she had Kithinji occupied parcel no. ABOTHUGUCHI/KARIENE/266. She also stated that the deceased had in his life time given parcel No. 1742 to his daughter Mary Kanana. After the application had been pending before court for quite some time the court on 30.1.2006 ordered that the grant be issued in the joint names of Nkirote and Kithinji

What falls before me for determination is the mode of distribution of this estate. It had been ordered that the issue of distribution be heard by way of viva voce evidence. However when the matter came for hearing on 6.7.2010 Kithinji failed to attend court. His counsel sought an adjournment but that adjournment application was opposed on the basis that Kithinji was deliberately delaying the matter and was taking advantage of the advanced age of his mother Nkirote. The court reviewed the order for receiving the evidence and ordered parties to file further affidavits if they wished or file submissions. I must begin by saying that learned counsel Mr. Kirima for Kithinji adduced evidence through submissions filed on behalf of Kithinji. That evidence was not countenanced. The only evidence before me is that the deceased left his wife Nkirote, five daughters and one son. Kithinji in this proposed distribution proposes that the whole estate be registered in the joint names of Nkirote and himself. That distribution which according to him was deliberated by the clan members failed to make provisions for the deceased daughters. To allow distribution as suggested by Kithinji would in my view go against the spirit of the new Kenyan Constitution. Article 27 provided equality and freedom from discrimination. In particular sub Article (4) forbids discrimination on the basis of race, sex, pregnancy, marital status, health status, ethnic or social origin, colour, age, disability amongst others. But it is Article 60 which directive applies to the case before me. Article 60 (1) provides

- |                   |  |  |
|-------------------|--|--|
| <b>productive</b> | <b>“Land in Kenya shall be held, used and managed and sustainable, and in accordance with the</b>                | <b>in a manner that is equitable, efficient, following principles;</b> |
| (a) .....         |  |  |
| (b) .....         |  |  |
| (c) .....         |  |  |
| (d) .....         |  |  |
| (e) .....         |  |  |
| (f)               | <b>Elimination of gender discrimination of law, customs and practices related to land and property in land;”</b> |  |

Bearing in mind those Articles, Kithinji's proposed mode of Distribution is discriminative of his sisters and cannot be allowed. I find that the distribution suggested by Nkirote to be more equitable and sane. I shall therefore adopt it in this judgment. The judgment of the court is as follows:

**1. The grant issued herein shall be confirmed in the following terms**

- (a) 2 acres out of Land Parcel No. ABOTHUGUCHI/KARIENE/266 to go to Francis Kithinji.**
  - (b) 0.5 acres of ABOTHUGUCHI/KARIENE/266 to go to Nkirote M'Mbiti and the remaining 0.46 acres to Miriam Ncece.**
  - (c) Land parcel No. ABOTHUGUCHI/KARIENE/161 to go to Stella Kagure (Whole parcel)**
  - (d) Land parcel No. ABOTHUGUCHI/KARIENE/1742**
    - (i) ½ acre to go to May Kanana who had purchased it from the deceased.**
    - (ii) The remaining ½ to go to Rubana Kaberia.**
  - (e) Land parcel No. ABOTHUGUCHI/RUIGA/1252 measuring 1 acre.**
    - (i) 0.5 acres to go to Priscilla Kithira**
    - (ii) 0.5 acres to go to Esther Gacheri**
  - (f) Plot No. 4B – Gatimbi Market be registered in the name of Nkirote M'Mbiti in trust of all the deceased's daughters.**
- 2. Leave is hereby granted to the deputy register of this court to sign any document on behalf any administrator who fails to sign such documents in order to put into effect this judgment.**

**3. There shall be orders as to costs**

Dated at Meru this 22<sup>nd</sup> day of October, 2010.

**MARY KASANGO  
JUDGE**