



SUCCESSION

- Ø Distribution.
- Ø The Constitution forbids discrimination.

**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MERU
SUCCESSION CAUSE NO. 29 'B' OF 1988**

IN THE MATTER OF THE ESTATE OF M'MUKINDIA M'NDEGWA (DECEASED)

FRANCIS M'IKIRIMA M'MUKINDIA PETITIONER

VERSUS

RAEL MUKOMERU M'MUKINDIA OBJECTOR

JUDGMENT

The deceased died intestate leaving surviving him:-

- | | |
|--|---------------------------|
| 1. Rael Mukomeru M'Mukindia | – widow |
| 2. Francis M'Ikirima M'Mukindia | – son |
| 3. Jacob Kinyua M'Mukindia | – son (deceased) |
| 4. Jaob Nkunja M'Mukindia | – son (deceased) |
| 5. Rose Kuria M'Mugambi | – married daughter |
| 6. Rebecca Kinaitore Mburugu | – married daughter |
| 7. Janet Kinya Miriti | - married daughter |
| 8. Ann Kanana Kimaita | – married daughter |
| 9. Hellen Maiti Mwongera | – married daughter |
| 10. Harriet Gakii Kashu | – married daughter |
| 11. Evangeline Karega Kiriinya | – married daughter |

The petition for grant of letters of administration intestate was filed by Francis M'Ikirima. In the petition, it is interesting to note that he did not list his mother Rael as surviving the deceased. By summons dated 23rd June 2003 Rael sought revocation of a confirmed grant which had been issued to Francis on 19th September 2001. In that confirmed grant, distribution of the estate of the deceased was done between Francis and the widows of his two deceased brothers. Rael and all the daughters of the deceased were not provided for in the distribution. By a consent before court on 12th November 2007, that confirmed grant was revoked and a grant was issued in the joint names of Rael and Francis. By then, it seems that one of the deceased properties, namely, Isiolo Township plot number 77 had been sold. Francis alleged that the proceeds of that sale were paid to Rael. Rael in turn alleges that it was Francis who received the proceeds. The issue as to whether Francis should account for those proceeds of that sale was the subject of a ruling delivered by Emukule J. on 24th April 2009. I am of the view that no party can seek to have this court revisit the issue of the sale of the Isiolo plot. This is because Emukule J. by his ruling deliberated on that issue. In considering the application which sought that Francis do account for those proceeds, Justice Emukule found that there was no merit in the application. I received oral evidence from Rael and her daughter Rose Kuria. I also received the evidence of Francis whose evidence was supported by Erick Mutembei who is the son of Jacob Kinyua, deceased. I had the opportunity to observe each witness as they testified. I formed the opinion that Rael was a more honest and reliable witness. I did not believe Francis. In respect of the evidence of Mutembei I find that I am in agreement with the submissions made by learned counsel Mr. Kaumbi, that Mutembei may have been naïve. It may well be that Mutembei is under the influence of his uncle Francis. There was a lot of argument on whether the married daughters of the deceased should inherit the property of the deceased and whether Rael can have a right to own a share of the deceased estate absolutely rather than for her lifetime. My simple response to those arguments is to refer to the Constitution, in particular, Article 27 (1) to (5) prohibits any discrimination whether on the basis of race, sex, pregnancy, marital status amongst others. Article 60 is very specific to this succession cause. That Article provides that land in Kenya shall be used and managed in a manner that is equitable, efficient, productive and sustainable and in accordance with the principles set therein. In (f) of that Article, it provides as follows:-

“Elimination of gender discrimination in law, *customs and practices related to land and property* in land;”

It is clear from that provision that the daughters and the wife of the deceased cannot be discriminated because of their gender, marital status or custom in their inheritance of the deceased estate. There is therefore no basis in the argument raised by Francis in that regard. I also wish

to state that I reject the evidence of Francis that he was given 1½ acres of land by his grandmother. That land was registered in the deceased name and not in the grandmother's name. Neither do I believe that there were family meetings where it was agreed how the estate was to be divided. Francis alleged that the meetings were held between himself, his two deceased brothers and Rael their mother. Rael was categorical that no such meetings ever took place. Her daughter PW2 who lives near Rael's home also said that she had no knowledge of such meetings. I have considered all the evidence tendered and the submissions of the learned counsel. I have also considered the evidence of Rose Kuria who indicated that the daughters of the deceased would not wish to get land in their names if their mother Rael was provided for in the distribution. I find that the distribution proposed by Rael is the most fair and just. I therefore order in this judgment that the grant be confirmed in the following terms:-

1. Land Parcel No. Kiirua/Kiirua/14

Area – 7.24 Hectare – 17.89 acres

TO BE SHARED AS FOLLOWS

(i) Rael Mukomeru Mukindia – 5.39 acres

(To hold for herself and in trust for the 7 daughters) namely:-

- (a) Rose Kuria M'Mugambi**
- (b) Rebecca Kinaitore Mburugu**
- (c) Janet Kinya Miriti**
- (d) Ann Kanana Kimaita**
- (e) Hellen Maiti Mwongera**
- (f) Harriet Gakii Kashu**
- (g) Evangeline Karega Kiriinya**

(ii) Francis Kirima – 4.00 acres

(iii) Family of late Jacob Kinyua – 4.5 acres

(This to be shared between his sons and daughters as follows)

- (a) Erick Mutembei)**
- (b) James Kirima) One (1.00) acre each**
- (c) Samuel Mugira)**
- (d) Daughters**
- (i) Nancy Ntinyari) 1.5 acres to be registered in**
- (ii) Mercy Makena) common in equal shares**
- (iii) Fridah Kanyiri)**

(iv) Family of the late Jaob Nkunja – 4.00 acres

To be registered as follows:-

- (i) Charity Makena (widow)) To be held by Charity**
- (ii) Frankline Muthuri (minor)) Makena in trust for the**
- (iii) Briaton Kirimi (minor)) minors in common in**
- (iv) Kelvin Kithinji (minor)) equal shares.**

2. LAND PARCEL NO. NTIMA/NTAKIRA/231

Area – 1.708 Hectares – 4.22 acres

To be shared as follows

- (i) Francis Kirima – 1.00 acre**
- (ii) Eric Mutembei to hold in trust for his brothers and sisters – 1.00 acre**
- (iii) Charity Makena to hold in trust for her children – 1.00 acre**
- (iv) Balance of 1.22 acre to be held by Rael Mukomeru Mukindia for herself and the 7 daughters as stated in 1. (i) above.**

3. Plot No. 5 Maili Kumi

Rael Mukomeru to hold it for life.

Reversion to the three sons or their families in common in equal shares. (Three sons are – Francis Kirima, Eric Mutembei and Charity Makena).

4. The Deputy Registrar of this court is hereby granted leave to sign documents in this matter on behalf of any of the administrators who may fail to sign such documents in order to put into effect the judgment of this court.

5. There shall be no orders as to costs.

Dated and delivered at Meru this 22nd day of October 2010.

MARY KASANGO
JUDGE