



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MERU**

Succession Cause 31 of 2001

IN THE MATTER OF THE ESTATE OF KIRIMA M'MUNGANIA.(DECEASED)
SIMON KABURU KIRIMA.....PETITIONER
VERSUS
JANE NKUENE KIRIMA.....OBJECTOR

RULING ON DISTRIBUTION

1. The deceased herein Kirima M'Mungania died on 27.12.2000 and his son, Simon Kaburu Kirima by a Petition filed on 1.2.2001 sought to be granted letters of Administration to administer the estate of his late father. On 22.3. 2001, Jane Nkuene Kirima filed an Objection to the grant being issued to Simon on the principal ground that she was the deceased's second wife and had not renounced her right to file the petition and the secondary ground was that the said Simon had not fully disclosed all the relevant facts regarding the estate including all the beneficiaries of the estate. In her cross- petition filed on 5.4.2001, she went further to pray that the letters of administration should be granted to her instead of Simon aforesaid.
2. Simon Kaburu in his Replying Affidavit sworn on 6.6.2001 stated inter-alia that the objector was a stranger to the deceased's family; is an impostor since she was not married to the deceased and that the deceased had divided his assets before death and had made no provision for the objector. In another affidavit titled "**Answer to Petition**" sworn on 5.4.2001, the objector specifically claimed land parcel number Igoji/Kinoro/845 which she was given by her late husband, so she deponed. The objection was not heard but on 15.5.2006, I appointed both parties as co-administrators to facilitate determination of the question of distribution of the estate and parties filed affidavits on their preferred mode of distribution as ordered. As I understand it, upon the two parties being appointed joint administrators, the objection was spent and the only issue left was whether Jane Nkuene was entitled to any part of the estate of the deceased if so, to what.
3. Parties tendered oral evidence on 24.4.2007 and on 21.5.2007 when the hearing was adjourned to enable advocates file their respective submissions, which they did prior to 19.6.2007, and on that day I reserved the Ruling for delivery. I now have all these on record and from my reading of the evidence, the affidavits on distribution and the submissions by advocates for the parties, the following issues emerge and require my determination;
4. Firstly, although initially Simon Kaburu had denied that Jane Nkuene was a wife of the deceased and swore an affidavit to that effect as earlier stated above, in his affidavit on distribution sworn on 7.7.2006, he acknowledged her as "**Jane Nkuene Kirima – 2nd wife**" and a dependant of the deceased. He went

further to suggest that she should inherit 1 acre out of Land Parcel Number Igoji/Kinoro/845 and that the remainder of that parcel of land should be inherited by Tabitha Kirima, Zipporah Kirima and Lucy Kirima in equal shares. The latter are all daughters of the deceased. This then determines the question whether Jane was a wife and dependant of he deceased because the matter can no longer be contention in the circumstances. Simon’s proposal on distribution on the whole is therefore, as follows and as contained at paragraph 4 of his Affidavit on Distribution and partly reproduced in submissions by Mr. Kiogora, Advocate;-

- (a) “LR. NO. IGOJI/KINORO/1673 measuring 0.40 of an Hectare which is occupied by ELIZABETH KIRIMA.**
- (b) LR. NO. IGOJI/KINORO/1672 measuring 0.10 of an Hectare and our family has agreed that the same to go to DANIEL MAJAU.**
- (c) LR. NO. IGOJI/KINORO/KINORO/1674 measuring 0.60 Hectare which is to be inherited by SAMUEL KIRIMA.**
- (d) LR NO. IGOJI/KINORO/1675 measuring 0.60 of an Hectare to be inherited by Harun Kirima.**
- (e) LR. NO. IGOJI/KINORO/1676 measuring 0.60 of an Hectare to be inherited by SILAS KIRIMA.**
- (f) LR. NO. IGOJI/KINORO/1677 measuring 0.60 of an Hectare to be inherited by SIMON KIRIMA.**
- (g) LR. NO. IGOJI/KINORO/1678 measuring 0.60 of an Hectare to be inherited by DANIEL KIRIMA.**
- (h) LR. NO. IGOJI/KINORO/1644 to be inherited TABITHA KIRIMA.**
- (i) LR. NO. IGOJI/KINORO/845 to be inherited by JANE NKUENE KIRIMA 1Acre, the balance to go to TABITHA KIRIMA, ZIPPORAH KIRIMA and LUCY KIRIMA.**
- (j) PLOT NO 10A Michogomone Market developed to be inherited by ELIZABETH KIRIMA.**
- (k) PLOT NO. “2B” Michogomone to inherited by JANE NKUENE KIRIMA”.**

5. Jane Nkuene in her proposal on distribution, in evidence as well as in submissions by Mr. Anampiu Advocate states that

“The properties namely L.R.Igoji/Kinoro/1672 – 1678 and L.R. Igoji/Kinoro/1644 and Plot No. 2’B’ Michogomone Market be distributed to the children of the 1st wife namely:- Gitonga Kirima, Simon Kaburu, Gikunda Kirima, Samuel Kirima, Karimi Kirima, Tabitha Kirima and Lucy Kirima”

6. The explanation given is that the first wife **“Elizabeth Kirima and her children are in occupation and use the said parcels of land.”**

7. Jane then proposes that she should inherit the following properties;

- (a) L.R. No. Igoji/Kinoro/845 (whole of it)
- (b) ½ of Plot No. 10A Muchogomone Market.
- (c) Share of money in Kenya Commercial Bank Ltd A/c No. 195-03-637-3.

8. Secondly, I should at this stage and before determining the issue of distribution, state that the deceased (and it is not in contention) left behind the following parcels of land:

- (a) Igoji/Kinoro/1672
- (b) Igoji/Kinoro/1673
- (c) Igoji/Kinoro/1674
- (d) Igoji/Kinoro/1675
- (e) Igoji/Kinoro/1676
- (f) Igoji/Kinoro/1677
- (g) Igoji/Kinoro/1678
- (h) Igoji/Kinoro/1644
- (i) Igoji/Kinoro/845
- (j) Plot No. 10A Muchogomone Market
- (k) Plot No. 2B Muchogomone Market

9. The bank account at Kenya Commercial Bank is disputed because Simon Kaburu stated that his mother withdrew all the money and currently has no funds in it. It is unclear when and by what authority she did so if the account was operated by the deceased. Jane in evidence said that it had Ksh.400,000/- in it and she wants a share therefrom.

10. As to the persons beneficially entitled to inherit the deceased's estate, Simon states that they are the following:

- 1. Elizabeth Kirima - 1st wife
- 2. Jane Nkuene Kirima - 2nd wife
- 3. Samuel Kirima - Son
- 4. Harun Kirima - Son
- 5. Silas Kirima - Son
- 6. Simon Kirima - son
- 7. Daniel Kirima - son
- 8. Tabitha Kirima - Daughter
- 9. Zipporah Kirima - Daughter
- 10. Gakii Kirima - Daughter

11. Jane Nkuene agrees but states that her daughters Antonina Kinanu, Purity Muthoni and Stella Kirima although not biological children of the deceased were nonetheless dependants of the deceased and were

entitled to a share of his estate as such. That he had adopted them under customary law and had educated and taken care of them as his own. Simon counters this argument by saying that the fathers of those girls are alive and should take care of their own.

12. Thirdly, therefore, and to bring this matter to an end and since there would seem to be no dispute that Jane is entitled to some portion of the estate, I should start by determining on distribution with what I consider to be due to her. In doing so, I am guided by s.40 of the Law of Succession Act which provides as follows:-

“(I) Where an intestate has married more than once under any system of law permitting polygamy, his personal and household effects and the residue of the net intestate estate shall, in the first instance, be divided among the houses according to the number of children in each house, but also adding any wife surviving him as an additional unit to the number of children.

(2) The Distribution of the personal and household effects and the residue of the net intestate estate within each house shall then be in accordance with the rules set out in sections 35 to 38”

13. I am also guided by s.47 of the Act which provides as follows:-

S.47 S. 47. The High Court shall have jurisdiction to entertain any application and determine any dispute under this Act and to pronounce such decrees and make such orders therein as may be expedient;

Provided that the High Court may for the purpose of this section be represented by resident magistrate appointed by the Chief Justice.”

14. The reason I consider s.47 to be important is because it is not possible in every circumstance to apply s.40 aforesaid strictly and to the letter and this was also the holding of Omollo J.A. in **Rono vs Rono C.A. 66/2002.**

15. Appropriately guided therefore, I think, it is not disputed that Jane has occupied title number Igoji/Kinoro/845 exclusively save that Haron Kirima has some tea on it which he harvests occasionally. I see no prejudice to any member of the Kirima family, if Jane inherits the entire parcel of land aforesaid. The proposal that the daughters of the deceased viz Tabitha, Zipporah and Lucy Kirima should share the land with her is unreasonable and will only enhance friction in the family. It would also be inequitable considering that other properties left behind by the deceased exist for distribution. Jane should inherit the land aforesaid with her daughters whether sired by the deceased or not and not Elizabeth’s daughters.

16. Regarding the business plots, in evidence before me, Jane stated as follows in cross-examination;

“The proposal that I take Plot No. 2 ‘B’ and his mother (Kaburu’s mother, Elizabeth Kirima) takes No. 10 ‘A’ is acceptable to me”.

These words being her own, I consider it easy to order that Jane should inherit plot No. 2 ‘B’ Muchogomone Market.

17. The only other asset that Jane is interested in is the money allegedly held at Kenya Commercial Bank Ltd. I will make no orders as regards that money because no evidence has been placed before me to show that there is any money in that account and the facts are inconsistent so that without evidence to enable a fair distribution, I consider the matter moot.

18. Having disposed of the entitlement due to Jane, it follows that since there is no dispute regarding the other properties, then the proposal by Kaburu as authored above is allowed save that title No. Igoji/Kinoro/1673 shall be inherited by Elizabeth Kirima for life and thereafter by Zipporah Karimi solely.

The distribution of the estate shall therefore be as follows;-

- i. LR. NO. IGOJI/KINORO/1673 measuring 0.40 of an Hectare which is occupied by ELIZABETH KIRIMA for life and thereafter by ZIPPORAH KARIMI solely.**
- ii. LR. NO. IGOJI/KINORO/1672 measuring 0.10 of an Hectare to go DANIEL MAJAU.**
- iii. LR. NO. IGOJI/KINORO/KINORO/1674 measuring 0.60 Hectare to be inherited by SAMUEL KIRIMA.**
- iv. LR NO. IGOJI/KINORO/1675 measuring 0.60 of an Hectare to be inherited by HARUN KIRIMA.**
- v. LR. NO. IGOJI/KINORO/1676 measuring 0.60 of an Hectare to be inherited by SILAS KIRIMA.**
- vi. LR. NO. IGOJI/KINORO/1677 measuring 0.60 of an Hectare to be inherited by SIMON KIRIMA.**
- vii. LR. NO. IGOJI/KINORO/1678 measuring 0.60 of an Hectare to be inherited by DANIEL KIRIMA.**
- viii. LR. NO. IGOJI/KINORO/1644 to be inherited by TABITHA KIRIMA.**
- ix. LR. NO. IGOJI/KINORO/845 to be inherited by JANE NKUENE KIRIMA solely.**
- x. PLOT NO 10A Michogomone Market to be inherited by ELIZABETH KIRIMA.**
- xi. PLOT NO. "2B" Michogomone to inherited by JANE NKUENE KIRIMA".**

19. These are the final orders of this court and each party should bear any attendant costs without burdening the other including the costs of this petition and the applications with in it.

20. Orders accordingly.

DATED SIGNED, AND DELIVERED AT MERU THIS 24TH DAY OF JULY 2007

ISAAC LENAOLA,

JUDGE

In the presence of:

Mr. Anampiu Advocate for the petitioner

N/A Advocate for the objector

Objector present.

ISAAC LENAOLA,

JUDGE