



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MERU
Succession Cause 495 of 2004

IN THE MATTER OF THE ESTATE OF M'IKIRU M'MUKINDIA...(DECEASED)

JUSTUS KAIRIGO M'IKIUGU PETITIONER

V E R S U S

JUSTUS KAIRIGO M'IKIUGU.....RESPONDENT/PETITIONER

SILAS KAIMENYI.....RESPONDENT

STANLEY NDEREBA.....RESPONDENT

R U L I N G O N D I S T R I B U T I O N

1. The deceased herein, M'Ikiugu M'Mukindia died on 3.9.2002 and on 4.11.2004, his son, Justus Kairigo M'Ikiugu filed a petition seeking letters of administration to administer the estate. He listed the following assets as subject to distribution since the deceased had died intestate;

- (i) Land title No. Ontulili/Ontulili/Block 1/Katheri /757
- (ii) Land Title No. Abothuguchi/Katheri/2002.
- (iii) Land Title No. Abothuguchi/Katheri/382

Apparently however, other land parcels do exist as will be seen later in this Ruling.

2. The survivors of the deceased were listed as:-

- 1. Martha M'Ikiugu
- 2. Geoffrey Riungu M'Ikiugu
- 3. Jackson Kiambi M'Ikiugu
- 4. Justus Kairigo M'ikiugu
- 5. Stanley Ndereba M'Ikiugu
- 6. Joseph Gitonga M'Ikiugu

7. Mary Nkuene M'Ikiugu
8. Silas Kaimenyi M'Ikiugu

3. There were certain interlocutory proceedings taken after the filing of the petition but on 21.5.2007 this court ordered that Justus Kairigo M'Ikiugu and Mary Nkuene his sister be appointed as joint administrators and that parties do proceed to the issue of distribution before the grant of letters of administration can be confirmed. That order was informed by the fact that parties were really disagreeing on that crucial aspect of the succession matter.
4. The point of contention so far as I can see is whether one Onesmus Mutuma should get 1 acre out of Land Parcel number Abothuguchi/Katheri/2002 as proposed by his mother, Mary Nkuene aforesaid. I have seen an affidavit sworn on 21.6.2006 by the said Onesmus Mutuma and it his argument that he was brought up, educated and circumcised by the deceased who adopted him as his child and dependant. That he has a **"house, napier grass, maize, vegetables in the ½ acre"** he occupies and that the deceased had said that he should be given ½ acre from the above land parcel. He however goes on at paragraph 6 of the same affidavit to say that he needs **"1 acre out of the entire estate of the deceased."** In an affidavit sworn on the same day, Mary Nkuene depones that she gave birth to Mutuma before she got married and when she did (in 1983) she left him under the care of her father, the deceased, who brought him up, circumcised him and paid his school fees prior to death.
5. Justus Kairigo in this affidavit sworn on 26.7.2006 denied the above matters and said that Mutuma has no property on the land but admitted that Mutuma used to live in his father's house before he voluntarily left (paragraph 7 thereof). He further depones that the dispute between them all is fuelled by his elder brother (unnamed) who has moved to frustrate the distribution of the estate of the deceased. Silas Kaimenyi in an affidavit sworn on 26.7.2006 takes the same position as Justus and so does Stanley Ndereba, another of their brothers.
6. I will leave the matter of Onesmus Mutuma but will revert to it shortly.
7. It seems to me that title Abothuguchi/Katheri/382 has no dispute because the deceased had prior to his death determined that it should be shared equally between Geoffrey Riungu M'Ikiugu and Jackson Kiambi M'Ikiugu and that fact is conceded by both Justus and Mary and so distribution shall be in those terms.
8. Regarding title number Ontulili/Ontulili/Block 1/Katheri/757, it is also agreed that Geoffrey Riungu M'Mukindia obtained a judgment in Meru CMCC No.457/92 which was confirmed in Meru HCCA 107/98 and that parcel of land as deponed in his affidavit sworn on 8.4.2005 by dint of those judgments legally belongs to him and this court can only confirm those decisions as I hereby do.

9. As for title number Ontulili/Block Katheri/752, I am not certain what connection that title has with Geoffrey M’Kiugu’s parcel number 757 above because parties have referred to it as they also refer to parcel No. 756. In any event, since it is agreed that Joseph Gitonga M’Kiugu should get 6 acres of land and Justus confirms that parcel number 756 is indeed 6 acres and should be inherited by the said Joseph and Mary agrees, then I will adopt that position and grant him the 6 acres comprised in title No. Ontulili/Block 1/Katheri/756.

10. Justus on the other hand proposes distribution as follows:

- (i) Martha M’Kiugu - 0.5 acres
- (ii) Stanley Ndereba - 2.75 acres
- (iii) Silas Kaimenyi - 2.75 acres

11. I should pause here and note that Justus is claiming title No. 757 which I said cannot be distributed in the manner he seeks in view of the clear judgment in favour of Geoffrey Riungu, M’Kiugu whatever my reservations or the objection that Justus has to it.

12. Having so said therefore it seems to me that Mary’s proposal that Justus, Stanley Ndereba and Silas Kaimenyi as well as their mother, Martha are all entitled to a share of that parcel of land subject to my decision on Onesmus Mutuma is the more fair; reasonable and agreeable one in the circumstances of this case.

13. I have looked at all the affidavits regarding Mutuma and I have elsewhere above detailed out what the parties have stated. I am convinced that Mary and Onesmus are telling the truth when they say that the latter was raised by the deceased as a dependant. I say so because Justus confirms that Onesmus indeed lived with his grandfather at the latter’s house. In the course of proceedings I also established that most likely than not Onesmus was chased away from that home to frustrate his claim to the estate and contrary to Justus contention, Onesmus did not leave the land voluntarily. In any event and pursuant to s.26 of The Law of Succession Act, I hold that Onesmus was indeed a dependant of the deceased and is entitled to a reasonable provision out of that estate. What would be reasonable, in my view, is that he inherits one (1) acre which he contends was given to him by the deceased and which he occupied before being evicted by his uncles.

14. In the event and for the above reasons the estate shall be distributed as follows

- (a) Title No. Abothuguchi/Katheri/382 to be inherited by Geoffrey Riungu M’Kiugu and Jackson Kiambi M’Kiugu in equal shares.
- (b) Title No. Ontulili/Ontulili/Block 1/Katheri/757 to be inherited by Geoffrey Riungu M’Kiugu.
- (c) Title No. Ontulili/Ontulili/Block1/Katheri/756 to be inherited by Joseph Gitonga M’Kiugu.
- (d) Title No. Abothuguchi/Katheri/2002 to be shared as follows

- (i) Martha M'Ikiugu (deceased wife) - 1 acre
- (ii) Justus Kairigo M'Ikiugu - 1 acre
- (iii) Stanley Ndereba M'Ikiugu - 1 acre
- iv) Silas Kaimenyi M'Ikiugu - 1 acre
- v) Onesmus Mutuma M'Ikiugu - 1 acre

15. The grant of letters of administration should be confirmed in those terms upon a suitable application being made by the administrator in the usual manner.

16. Costs shall be in the cause.

17. Orders accordingly.

DATED, SIGNED AND DELIVERED IN OPEN COURT AT MERU THIS 17TH DAY OF OCTOBER 2007.

ISAAC LENAOLA

JUDGE In the presence of

Mr. Muchangi Advocate for the Applicant

Mr. Ringera Advocate for the Respondent ISAAC LENAOLA

JUDGE