



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAKURU
Succession Cause 487 of 2004

IN THE MATTER OF THE ESTATE OF PETER MWAURA GITAHI *alias*

MWAURA PETER GITAHI – DECEASED

PETER KABATA MWAURA.....1ST PETITIONER

APOLLO BORO MWAURA.....2ND PETITIONER

AND

JULIA WANJA MWAURA.....APPLICANT

JUDGMENT

Peter Mwaura Gitahi alias Mwaura Peter Gitahi (*hereinafter referred to as the deceased*) died on the 30th March 2003. On the 17th September 2004, Peter Kabata Mwaura (*1st petitioner*) and Apollo Boro Mwaura (*2nd petitioner*) applied to be issued with letters of administration in respect of the deceased's estate. In the said petition, the petitioners listed the beneficiaries of the deceased's estate two widows and seven sons of the deceased. The petitioners left out all daughters of the deceased. The only asset of the deceased was stated as parcel No.*Laikipia/Nyahururu/4871* measuring 17.29 Hectares. The letters of administration were duly issued to the petitioners on the 24th November 2004. Julia Wanja Mwaura (*applicant*), a daughter of the deceased made an application for revocation of the said grant issued to the petitioners on the 21st December 2004 on the grounds that the petitioners had failed to disclose that the applicant was a beneficiary to the estate of the deceased. Musinga J, heard the application and ordered the applicant to be included as a beneficiary of the deceased's estate before the said grant could be confirmed.

The petitioners applied for the said letters of administration to be confirmed. The two widows of the deceased agreed to subdivide the parcel of land that comprised the estate of the deceased into two equal portions. Each widow was to inherit half a portion of the subdivided parcel of land. The family of the 2nd widow, Beth Njeri Mwaura made a proposal on the distribution of their portion of land. All members of the 2nd family of the deceased consented to the proposed mode of distribution of the estate of the deceased. On the 3rd August 2007, this court partially confirmed the letters of administration and adopted the proposal made by the 2nd family of the deceased on distribution.

The 1st family of the deceased *i.e.* the children of Ruth Murugi Mwaura did not agree on the mode of distribution proposed by the 1st petitioner, Peter Kabata Mwaura. Julia Wanja Mwaura and David Muchiri Mwaura were opposed to the proposal made by the 1st petitioner on how their portion of the estate of the deceased was to be distributed. This court directed the 1st petitioner and the applicant to file

further affidavits to indicate their preferred mode of distribution of the deceased's estate. The 1st petitioner and the applicant duly filed their proposal as to the distribution of the deceased's estate.

This court fixed the hearing of the case on distribution. During the hearing of the case, I heard the evidence of the 1st petitioner Peter Kabata Mwaura, the applicant, Julia Wanja Mwaura and DW2 David Muchiri Mwaura. After the close of the case, the issue that emerged for determination by this court was what mode of distribution should be adopted by the court in distributing the portion of the deceased's estate due to the 1st family of the deceased. The 1st petitioner proposed that the court should take into account the gifts in form of cash which were given to some of the beneficiaries by the deceased prior to his death in determining the acreage that each beneficiary should get. The 1st petitioner proposed that the applicant should get a lesser acreage of the parcel of land because she was not one of the sons of the deceased. On her part, the applicant proposed that all the beneficiaries of the estate of the deceased should inherit equal share save for their mother who was to inherit an acre of land. DW2 supported the applicant in this regard.

The issue for determination by this court is therefore which mode of distribution should be adopted by this court in distributing the undistributed portion of the deceased's estate. **Section 29** of the **Law of Succession Act** recognises all the children of the deceased irrespective their gender and their marital status as dependants of the estate of the deceased. In this regard therefore, for the purposes of distribution of the estate of the deceased, the applicant is a beneficiary of the estate of the deceased. **Section 40(1)** of the **Law of Succession Act** provides for the mode of distribution to be adopted by the court in the event that the deceased was polygamous. The said section provides that;

“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.”

In the present case, the 1st petitioner proposes an unequal mode of distribution of the estate of the deceased. He justifies his proposal on the basis that the deceased had given money to some of the beneficiaries prior to his death. He further testified that a week after the deceased died, the family of the deceased met and discussed on the mode of distribution of the deceased's estate. He maintained that all the members of the family of the deceased agreed on the proposal that he made to distribute the estate of the deceased.

Upon evaluating the evidence adduced by the 1st petitioner, this court finds no justification for the distribution of the remainder estate of the deceased upon any other basis other than on equal basis. The 2nd family of the deceased agreed to distribute their portion of the land that they had inherited on equal basis. I find no reason to distribute the remainder of the estate of the deceased other than in the mode of distribution adopted by the 2nd family of the deceased. It is on the same basis that the applicant proposes to distribute the estate of the deceased.

Having carefully evaluated the evidence adduced in this succession cause, I do order that the remainder of the estate of the deceased due to the 1st family of the deceased shall be distributed as hereunder;

- (i) Ruth Murugi Mwaura - 1 acre
- (ii) Peter Kabata Mwaura - 5 acres
- (iii) David Muchiri Mwaura - 5 acres
- (iv) James Mbugua Mwaura - 5 acres
- (v) Julia Wanja Mwaura - 5 acres

Since this was a dispute involving family members, there shall be no orders as to costs. The 1st petitioner or the applicant shall be at liberty to apply for confirmation of grant in accordance with the judgment of this court.

DATED at NAKURU this 5th day of December 2007

L. KIMARU

JUDGE