



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MERU

Succession Cause 257 of 1997

IN THE MATTER OF THE ESTATE OF GICHOBHI JOHANA (DECEASED)

JESCA N KINGA GICHOBHI)

FRANCIS GITONGA GICHOBHI) PETITIONERS

JULIUS NYERERE ERASTUS)

JUDGMENT OF THE COURT

1. This matter relates to the estate of Erastus Gichobi Johana son of Johana Mwereria (deceased). The Petition for Grant of Letters of Administration was filed by Jesca Nkinga Gichobi, Julius Nyerere Erastus and Francis Gitonga Gichobi in their respective capacities as wife and sons of the deceased.

2. According to the petition, the deceased was survived by the following ten beneficiaries:-

- Jesca Nkinga Gichobi - wife
- Julius Nyerere Gichobi - son
- Francis Gitonga Gichobi - son
- Mutegi Gichobi - son
- Mbaabu Gichobi - son
- Ndege Gichobi - son
- Kibaara Gichobi - son
- Kimathi Gichobi - son
- Mercy Kagendo - daughter
- Margret Muthoni - daughter

3. The properties shown to have been left behind by the deceased were the following:-

- Land Parcel No. Igogi/Kiangua/940 measuring 5.4 Ha valued at Kshs. 50,000/=.

- Land parcel No. Mwimbi/Chogoria/599 measuring 0.72Ha. and valued at Kshs. 60,000/=

4. The deceased was said to have no liabilities.

5. The two daughters, Mercy Kagendo and Margaret Muthoni renounced all their rights and title to the Letters of Administration of the estate of the deceased. Their renunciation affidavit was filed in court on 26.9.1997.

6. Consents to the petition for Letters of Administration by the three petitioners were given by the other five sons of the deceased, namely Mutege, Mbaabu, Ndege, Kibaara and Kimathi.

7. For some reason, the petitioners have not been able to agree on the distribution of the deceased's estate. Interestingly also, apart from the two properties that were indicated in the petition for grant, the following additional properties are at the centre of contention:-

- Plot No. 506'A'
- Plot No. 506'B'
- Plot No. 37 Kabece Market
- Plot No. 33 Kiangua Market.
- Plot No. Igoji/Mweru/1/682
- Shares with British American Tobacco Shares A/C No. 0093800.

8. There is also an additional beneficiary by the name Kanini Kuura. None of the petitioners have shed light as to who Kanini Kuura is vis-à-vis the estate of the deceased. However, since all the petitioners seem to agree that she is entitled to a share of the deceased's estate, the court will not, at this juncture seek to establish that relationship.

9. As regards the additional properties, the court can only say that by failing to disclose these properties at the time of filing of the petition for Letters of Administration, the applicants denied the Government much needed revenue from stamp duty payable. In the circumstances, I direct that the final orders to be made by myself will be implemented subject to payment of requisite stamp duty that would have been paid at the time of filing of the application on 26.9.1997.

10. Having disagreed on the distribution of the estate, and consequent upon an order of this honourable court, the 1st and 2nd petitioners filed their respective affidavits of protest on distribution. The 3rd petitioner did not file any affidavit. I shall now put side by side the two proposals for each of the properties.

(a) L.P. Mwimbi/Chogoria/599(2.5 acres)

2nd Petitioner's proposal

1st Petitioner's proposal

Jesca Nkinga Gichobi	-	0.3125 acres	Gives the property to the same
Julius Nyerere Erastus	-	0.3125 acres	beneficiaries but gives no
Francis Gitonga Gichobi	-	0.3125 acres	definite shares to each.
Mutege Erastus Gichobi	-	0.3125 acres	

Kanini Kuura - 0.3125 acres
J. Kibaara Erastus - 0.3125 acres
Wilberforce Ndege Erastus - 0.3125 acres
Kimathi Gichobi - 0.3125 acres

(b) L.P. No. Igoji/Kiangui/940 (shown to measure 5.4 Ha. as per the petition).

<u>2nd Petitioner's proposal</u>	<u>1st Petitioner's proposal</u>
Julius Nyerere Erastus - 1.668 acres	1.60 acres
Jesca Nkinga Gichobi - 1.668 acres	1.60 acres
Francis Gitonga Gichobi - 1.668 acres	1.60 acres
Mutegi Erastus Gichobi - 1.668 acres	1.60 acres
Kanini Kuura - 1.668 acres	1.60 acres
J. Kibaara Erastus - 1.668 acres	1.60 acres
Wilberforce Ndege Erastus - 1.668 acres	1.60 acres
Kimathi Gichobi - 1.668 acres	1.60 acres

(c) Plot No. 506'A'

<u>2nd Petitioner's proposal</u>	<u>1st Petitioner's proposal</u>
To be registered in the name of Jesca Nkinga Gichobi and the same to revert to the following in equal shares upon demise of Jesca Nkungi Gichobi.	The plot to be inherited by Jesca Nkinga Gichobi.

Julius Nyerere

Francis Gitonga

Mutegi Gichobi

Justus Kibaara

Wilberforce Ndege Erastus

Kimathi Gichobi

Kanini Kuura

(d) Plot No. 506'B'

<u>2nd Petitioners proposal</u>	<u>1st Petitioner's proposal</u>
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Plot to go to Julius Nyerere

Plot to go to Julius Nyerere Erastus

(e) Plot No. 37 Kabece Market

2nd Petitioner's proposal

1st Petitioner's proposal

To be inherited by Jesca Nkinga Gichobi

and the same to revert to the following in equal share:-

Plot to be inherited by Jesca

Julius Nyerere

Nkinga Gichobi

Francis Gitonga

Mutegi Gichobi

Justus Kibaara

Wilberforce Ndege Erastus

Kimathi Gichobi

Kanini Kuura

(f) Plot No. 33 Kiangui Market

2nd Petitioner's proposal

1st Petitioner's proposal

The plot to be sold and proceeds therefrom to be shared

The plot to be inherited by:-

equally among:-

Julius Nyerere

Julius Nyerere

Francis Gitonga

Francis Gitonga

Mutegi Gichobi

Mutegi Gichobi

Justus Kibaara

Justus Kibaara

Wilberforce Ndege Erastus

Wilberforce Ndege Erastus

Kimathi Gichobi

Kimathi Gichobi

Kanini Kuura

Kanini Kuura

Jesca Nkunga Gichobi

(g) Shares at British American Tobacco A/C No. 0093800

Both 2nd and 1st Petitioner are agreed that these go to Jesca Nkinga Gichobi

(h) Plot No. Igoji/Mweru/1/682.

2nd Petitioner's proposal

1st Petitioner's proposal

That plot should be sold and proceeds to be shared equally Proposes that the plot should

Among:-

be inherited by:-

Julius Nyerere

Julius Nyerere

Francis Gitonga

Francis Gitonga

Mutegi Gichobi

Mutegi Gichobi

Justus Kibaara

Justus Kibaara

Wilberforce Ndege Erastus

Wilberforce Ndege Erastus

Kimathi Gichobi

Kimathi Gichobi

Kanini Kuura

Kanini Kuura

Jesca Nkinga Gichobi

11. On the basis of the above, the parties want me to decide the issue of distribution.

12. I have compared the two proposals and find that the points of departure between the two are minimal. One such point of departure is the acreage due to each beneficiary in respect of Plot No. Mwimbi/Choboria/599. The 1st petitioner does not indicate the actual portions due to each, but the 2nd petitioner does so.

13. Secondly, for L.P. No. Igogi/Kiangui/940 the 2nd petitioner proposes that each beneficiary gets 1.668 acres while the 1st petitioner proposes 1.60 acres. Neither of the two petitioners produced a copy of title to confirm the actual acreage of the parcel. I tend to believe that the 2nd petitioner, who is son to the 1st petitioner is likely to be seized of the correct acreage.

14. There is also a minor point of departure regarding plot No. 506' A'. While both petitioners agree that the plot should be inherited by Jesca Nkinga Gichobi, the 2nd petitioner goes further and makes provision for the other beneficiaries beyond the life of the 1st petitioner.

15. As regards Plot No. Igogi/Mweru/1/682, the 2nd petitioner proposes that the same be sold and proceeds therefrom be shared equally among all the beneficiaries including the 1st petitioner. The 1st petitioner's proposal is that the deceased's sons and one Kanini Kuura shall inherit the plot. The same position obtains with regard to plot No. 33 Kiangua market.

16. After carefully weighing the two proposals, I approve distribution of the deceased's property as per the proposal put forward by the 2nd petitioner Julius Nyerere Erastus, dated and filed in court on 13.10.2006. In my considered view, none of the beneficiaries will be prejudiced by the said distribution and the 1st petitioner will even get a little more than she would otherwise get under her own proposal. I am satisfied that since the 1st petitioner is holding whatever share she has for the duration of her life, the 2nd petitioner has given the 1st petitioner the opportunity to share out the same in her own lifetime. This will definitely reduce any friction that would otherwise arise after the 1st petitioner's demise.

17. Costs shall be in the cause.

18. Orders accordingly.

Dated and delivered at Meru this 4th day of December, 2006.

RUTH N. SITATI

JUDGE