



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
SUCCESSION CAUSE 503 OF 1985

IN THE MATTER OF THE ESTATE OF MUHINDI KIGURU (DECEASED)

JUDGMENT

The late Muhindi Kiguru (deceased) passed away on 7th July 1974 and the grant of letters of administration intestate was issued to the Public Trustee of the Republic of Kenya on 20th August, 1985.

According to the petition for grant the deceased was survived by five (5) widows, fifteen sons and eight daughters as detailed in the petition for grant.

The Public Trustee sought for the confirmation of the grant by way of the summons for confirmation dated 17th June 2002. According to the supporting affidavit sworn by the Public Trustee on 17th June 2002, the court was asked to assist in determining the shares of the heirs.

The deceased was survived by the following heirs:

1st House

1. Wanjiku Muhindi (deceased)
2. Kiguru Muhindi (son) deceased)
3. Hosting Francis Kariuki Muhindi (son)

2nd House

1. Nyathira Muhindi (widow)
2. Kiguru Muhindi (deceased)

3rd House

1. Mburu Muhindi (widow) deceased)
2. Lilian Wambui Muhindi (daughter)

4th House

1. Ruth Wambui Muhindi (widow)
2. Muthoni Mburu Muhindi (son)
3. Cyrus Kariuki Muhindi (son)

4. Dawill Kinyanjui Muhindi (son)

5th House

1. Joyce Kibui Muhindi (deceased)
2. Stephen Kiguru Muhindi (son)
3. Paul Muhika Muhindi (son)
4. Anthony Kinyanjui Muhindi (son)
5. mathenge Muhindi (son)

7th House

1. Flora Njeri Muhindi (deceased)
2. Joseph Kiguru Muhindi (son)

8th House

1. Ruseta W. Muhindi (widow)
2. Kiguru Muhindi (son)
3. Francis Njeru Muhindi (son)

The issue in dispute is the determination of the shares to be allocated to the heirs in property known as Nyeri/Naromoru/382 measuring about 45.7 acres. The 6th house of Christine Wanjiru Muhindi has been in occupation of this parcel of land and claims to have been bequeathed by the deceased and also to have made substantial contribution towards the purchase and development and therefore sought for the order that the entire parcel of land be allocated to her and her children.

It would appear that the deceased other properties namely Loc.4/Ngararia/316 and Loc.4/Ngariria/659 were shared out as per the certificate of confirmation issued by the Resident Magistrate court Kandara on 14th September 1977 under section 120 of the Registered Lands Act. It would appear that the only properties remaining undistributed is the Naro Moro property, 146 shares with the East African Breweries that valued at Kshs.38,640 and cash held by the Public trustee. As regard Plot No. 8/5 Thika Municipality, this property belonged to the deceased daughter called Rhoda Wambui Kiguru, who pre-deceased the deceased. As she died without a spouse or child her estate was inherited by her only surviving and closest relative the deceased. No succession proceedings have been filed in respect of Rhoda's estate.

The 6th house represented by Christine Wanjiru Muhindi filed on affidavit of protest. The other houses have agreed on how the Naromoro land should be shared as per the agreement entered between the beneficiaries, on 25th April 2000 whereby it is proposed that the NaroMoro parcel of land be shared equally between the deceased eight houses. According to the protester, who refused to sign the agreement although one of her sons, Stephen Kiguru Muhindi signed, she was not party to the agreement as she has never been party to the distribution of the deceased other properties in Muranga.

The reason being that the deceased intention which intentions were made to her and (DW2) Alhos Marugu Wainaina. According to this witness, he knew the deceased very well from when he was living in Embu at a place called Murinduku with his several wives and children. It is only the protester who moved

to NaroMoru and her children from 1863, the protester has been his neighbour at the Naromoro farm.

It was in 1968 when this witness was having a dispute over his parcel of land and the deceased who was present said that it was his desire that the protester and her children should be the sole beneficiaries of the Naromoro land. This witness was also the chairman of the Naromoru Farmers Society that was in charge of marketing the milk and other farm products. The protester used to sell the milk at the society and other farm products and money would be deducted for the repayment of the loan to the settlement Trust Fund where the deceased had obtained the loan to buy the Naromoru land. This evidence was supported by DW3 William Karimi who is also a member of the protester since 1967. He told the court that the purpose of his evidence was only to confirm that since they settled at the settlement scheme in Naromoro, he has only known the protester and her children who have remained in exclusive occupation of the suit premises.

To summarize the protester's case and evidence she sought to be allocated the Naromoru plot solely or be compensated for the developments she has undertaken on the parcel of land. The land was bought with loan proceeds advanced by the Settlement Fund Trustees, so was the money to purchase the Dairy cows. The loan was to be repaid over many years with the produce from the farm mainly milk which was sold to the Kenya Creameries Co-operative through their local society. It is the protester and her children who used to look after the cows, cultivate the land and deliver the milk to the society. She produced a bundle of receipts which shows that she paid various sums of money from 1976-1979 and was issued with receipts for the loan repayment.

Besides the loan repayment, she has developed the entire suit premises which she has occupied with her children who have duly built their home and settled. This being a parcel of land in a Semi Arid area, it would be uneconomical to subdivide the land as proposed by the other beneficiaries. The other beneficiaries supported the sub-division that is contained in the agreement. Their case was presented by Roseta Wagiatha Muhindi the last widow of the deceased, Joseph Kiguru Muhindi, a son of the deceased by the 7th wife and Hastings Kariuki Muhindi the son of the first wife.

According to the parties, the deceased used to live in Embu a place called Murinduku but after independence and during the land consolidation in Central Province, the deceased relocated his wives to Muranga where they settled in his parcel of land known as Loc. 4 /Ngararia/316 measuring 14.4 acres and Loc. 4 Ngararia/654 measuring 3.4 acres.

The last widow was temporary left at Murinduku to look after the deceased livestock and after selling them and sharing the proceeds with the deceased's sons, she too joined the deceased with her co-wives in Muranga. According to the beneficiaries, some of the children of the deceased from other household used to live in Naromoro and help the protester with the work of milking cows and delivering milk to the local society. They were also involved in fencing the suit premises. They admitted that they took away some livestock when the deceased died.

Counsel for the protester and the beneficiaries filed written submissions and made oral submissions. The deceased herein died on 7th July, 1974 before the law of Succession came into operation. According to section 2(2) of the said Act, the law applicable for

“ The estates of persons dying before the commencement of this Act are subject to the written laws and customs applying at

the date of death, but nevertheless the Administration of their estates shall

commence or proceed as far as possible in accordance with this Act.

The law applicable at the time was the repealed section 120 of the Registered Land Act which gave the court powers to investigate who are the heirs of a deceased person and their respective interest to any land of the deceased properties. I wish to make reference to a publication on the customary law governing the estate under the kikuyu customary law.

“The court is bound to consider such evidence as other transmission of property by the deceased during his life time or or such things as subdivisions he has made on the land physically before he died and such other oral declarations he has made in respect of his property in order to arrive at its decision under section (section 120 of the Registered Land Act)(reported) in other words, the court should sit in the chair of the deceased and look at the circumstances that prevailed when he made his wives known and after considering all factors proved before it to make its decision. The approach in my view is common sense one and that all evidence of intestate disposition should be considered”

The Public Trustee left the matter to court to determine but their position is that the grant should be confirmed and the estate be distributed equally among all the houses as proposed in the supporting affidavit. On the other hand Mr. Kurauka counsel for the beneficiaries submitted that the Protester had entered into a consent on 14/10/99 whereby the suit premises was taken as part of the deceased estate.

I have considered the said order and I notice that liberty was given to any party to apply for determination of any outstanding unsettled issue that may not be agreed. In my humble view, the issues that are still outstanding the determination and which were not agreed upon are

1. Whether the protester’s contribution towards the purchase of the suit premises and the development of the property should be taken into account and compensation be allowed to her.
2. Secondly, whether the deceased wishes which are said to have been conveyed to (PW2) coupled with the protester’s exclusive rights to the use and occupation of the land which were confirmed by one of the beneficiaries who was denied a portion to cultivate by the deceased can be construed to mean that the deceased intended the protester to inherit the entire parcel of land.

After considering the evidence and the submissions, it is a little difficult to know the deceased intentions as part of the estate has been administered and distribution took place several years ago in 1977. The deceased also died about 30 years ago although it would seem the occupation of the suit premises has remained intact. What is clear from the valuation report filed by Gimco Ltd is that the suit premises measures about 45.7 acres. It is in a settlement scheme which clearly is an indication that it was acquired with a loan given by the Settlement Fund Scheme and that it is occupied by the protester and there are four separate homesteads occupied by the protester and her sons. The semi permanent homesteads are valued at Kshs.250,000/- and the land is utilized as follows:

- 1) Approximately (12) acres were under arable farming with subsistence crops in three fields under irrigation.
- 2) Approximately twenty five (25) acres were under pasture land.
- 3) Approximately 2 acres under trees.

The remainder of about 6 acres is under homesteads and orchards. I am of the humble view that the deceased could not have intended to dislodge his children from where they have settled. It is possible that the deceased had intended the protestor to occupy this land exclusively but this creates doubt in my mind because the deceased first widow lived with the protestor for some time although she did not have a house in the compound and she was said to have been a visitor while she was recuperating from sickness and she was not even buried on the land. The other issue to consider was the evidence of PW2 who said the deceased confided in him about his wishes to have the protestor inherit his land, this evidence was however not challenged although nobody else seems to have been aware of the deceased wishes. On a balance of probability it may be possible that the deceased intended the protester to inherit the suit premises. However the deceased died intestate and left no written will. This land is valued at Kshs.3,750,000/- although there is no valuation report for the 18 acres being the Muranga, property, cows and other assets, I do not know whether their value would exceed a total of 4 million.

In my opinion, it would be unfair and grossly inequitable to allow one household to benefit entirely from this property. On the other hand, I find that there is overwhelming evidence to support the protestors claim that she contributed to the purchase and development of the suit premises. She produced certain receipts and evidence to show how she used to deliver the milk in the wee hours in order to pay for the loan. Her house and those of her children are constructed on the property she has fenced and tilled and grown trees. Although the title is in the name of the deceased I find that she has substantial interest in this parcel of land. Moreover it was submitted that this land which is in a semi arid area cannot be subdivided beyond certain acreage as it would be uneconomical. The protester lives on this parcel of land as well as her children and I do not think that it would have been the intention of the deceased to render her destitute. She has been in exclusive possession of this land nurturing this land for about 42 years. I am satisfied that her contribution should be taken into account which I am of the humble view might have been the intention of the deceased.

Accordingly taking all the circumstances into account and considering all the matters that were placed before me, I order that the protester and her household be allocated 25.7 acres of the suit premises which should comprise the portions constituting the four homesteads. The remaining 20 acres be distributed to the other houses in equal shares.

The grant be and is hereby confirmed in the said terms.

It is so ordered.

Each party should bear their own costs this being a family matter.

M. Koome

Judge

Judgment read and signed on 15th July 2005.

M. Koome

Judge.