



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MERU
SUCCESSION CASE NO.235 OF 1992

IN THE MATTER OF THE ESTATE OF M'TAMBURUKA

RULING

M'RIMBERIA M'TAMBURUKA (the deceased) died intestate on the 9th January, 1989 aged 98 years. He was survived by five sons and one daughter. The five sons are: SILAS M'MARETE M'RIMBERIA (the petitioner); JEREMIAH M'RINGERA; MUROGI KILUA; M'MAGIRI M'RIMBERIA (the second objector); GEOFFREY NKONGE M'RIMBERIA (the third objector) and RUTH NDURU M'RIMBERIA (the first objector).

The deceased, at the time of his death, had one set Land Parcel No.KIBIRICHIA/NTUMBURI/25 measuring approximately 7.6 Heactares (the suit property).

On the 23rd December, 1992 the Petitioner filed this petition before this court for grant of letters of administration intestate in his capacity as the eldest son of the deceased. While the petitioner named his other four brothers as the deceased's dependants for purposes of inheritance of their father's estate, he did not name, in his supporting affidavit, Ruth Nduru as a dependant. This failure to name her as the deceased's daughter entitled to a share of the suit property prompted Ruth Nduru, M'MAGIRI M'RIMBERIA and GEOFFREY NKONGE to file these objections to the making of the grant to the Petitioner.

On 2nd March, 1993 Ruth Nduru Filed her objection to the making of a grant to the Petitioner and she recorded her interests in the estate of the deceased. She recorded that the suit property ought to be shared equally between the deceased's five brothers and herself because she, as the deceased's daughter, is also entitled to a share of his estate. She thus petitioned, by way of cross-application, for a grant of representation to the estate of the deceased.

On the 10th August, 1993 M'MAGIRI M'RIMBERIA filed the second objection to the making of this grant of representation to the estate of the deceased, citing his interest being an equal share of the suit property. It is his case that the suit property is to be subdivided equally between the deceased's five sons and one daughter. He deponed to in a supporting affidavit that Ruth Nduru is unmarried and is therefore entitled to a share of her father's estate. The second objector has also cross-petitioned for grant of representation to the estate of the deceased, so as to safeguard his interest.

Though Geoffrey Nkonge is referred to as the Third Objector, his objection to the making of the Grant is actually not in this file. He has however given evidence and has recorded his interest in the suit property: namely, that it should be shared equally between the deceased's five sons and one daughter.

The parties have all given evidence in this court. It is the evidence of the Petitioner that the only dependants of the deceased who are entitled to his estate are the five sons. He testified that Ruth Nduru is a married daughter of the deceased and cannot get a share of her father's estate under Kimeru Customary Law. He further testified that Ruth Nduru is married to Gerald Kanugu, that they got married in 1955 and have five children. He told the court that Ruth and her husband live at Ntumbiri, her husband's land.

Jeremiah M'Ringera (PW 2) agreed with the Petitioner that the grant of letters of administration should be issued to the Petitioner as their eldest brother and that this is permitted under Kimeru Customary Law. He said they have already sat down as members of Mbura Clan and agreed that the grant be issued to the Petitioner. It was also agreed at the said meeting that the suit land be subdivided equally between the deceased's sons. Ruth Nduru is still married to Gerald Kanugu and cannot get a share of her father's estate, he said.

Jeremiah M'Ringera (PW 2) testified that Gerald Kanugu paid dowry for Ruth Nduru and this included a cow and a ewe heifer. He referred to a photograph showing Ruth Nduru, Gerald Kanugu and one of their children which was taken in June, 1968 (Petitioner's Exhibit No.1).

MUROGU KILUA (PW 3) told the court that, when he was a Councillor in Dol Dol area of Nanyuki in 1975, he assisted Ruth Nduru and her husband Gerald Kanugu to acquire parcel of land there and to date that is where Ruth and Kanugu live as husband and wife.

Ruth Nduru gave evidence in support of her objection. She began by accepting that she is the deceased's daughter, that she is now an old woman aged 50 years and has five children; four daughters and one son. She, however, denied that she is married to Gerald Kanugu or at all. She has explained that all her children were born in her parent's home by different men. She gave an account of each child.

She said that the first child is called GLADYS KANYATA who is now a married woman. The father of Gladys is one MURINDU M'RI'GERA whose whereabouts she does not know now. She told the court that, when her father was alive, she did not even disclose to him that the father of Gladys Kanyata was MURINDU M'RINGERA because he, Murindu M'Ringera, stopped her from disclosing his names to her father. Ruth Nduru did not give any good reason why Murindu M'Ringera did not wish to be disclosed to the deceased.

Ruth Nduru testified again that she did not, and has not, disclosed to her five brothers that the father of Gladys Kanyata was Murindu M'Ringera. Yet again she did not explain to the court why she failed to tell them this important matter.

The second daughter of Ruth Nduru is called FETHA KARUTHU. She said that Gerald Kanugu is the father of this daughter, who also is now a married woman. It is the evidence of Ruth Nduru that she did not get married to Gerald Kanugu at all. What happened is that Gerald Kanugu paid her father one heifer, known in Kimeru as "NENI". After payment of this heifer Gerald Kanugu took FETHA KARUTHU to his home. The other fathers to her children did not pay any "Nenki" heifers to her father and they did not therefore take their children. As a result of this, she named her children after her brothers because she felt that they belonged to her father and to her brothers.

She also accepted that she and Gerald Kanugu took a photograph together with Fetha Karuthu in June but she emphasised that she did not get married to him.

Ruth said her third child is LOYCE KAGWERIA, who is also married. She, however, told the court that she does not know the father of this daughter because she had met him only once. She recalled that his speech sounded that of a kikuyu but she could not now recall whether he was circumcised or not. She also recalled that LOYCE KAGWERIA has now eloped with a man whom she does not know.

The fourth child is one PURITY KAROKI whose father she also does not know because she met him only once over Christmas in Katheri area. Purity Karoki is not married now.

Ruth said her fifth child is Joseph Mburugu whose father was a house servant to her third brother, MUROGU KILUA (PW 3) and that his house servant had made her pregnant. She concluded that she does not know where that house servant is at the moment.

Ruth Nduru conceded that she is the registered owner of a parcel of land Ref.KIBIRICHIA/NTUAMBERI/1035 meaning 1.4 H.A. which she presented to court as exhibit No.2.

She said she bought this farm from Peter Mwarania but that she does not live on it.

The second and Third Objectors have each given evidence in support of Ruth Nduru that she is not married to Gerald Kanugu or at all and that she is entitled to inherit a share of the deceased's estate.

I have given this evidence and the submissions made by Mr Kioga (acting for the Petitioner) and Mr Wilson Mburugu (acting for the Respondent) due consideration. It is not in dispute, and I so find, that the deceased died intestate, he is survived by five sons and one daughter, and had the suit property as his estate, measuring 7.6 H.A. This is the estate which is to be subdivided amongst his dependants.

I have carefully thought about the evidence given by Ruth Nduru relating to her marital status. I do not accept it as the truth. I particularly reject her explanation that she does not know the fathers of her children save for Gerald Kanugu and Murindu M'Ringera. Ruth Nduru struck me as a smooth liar. I find that she got married to Gerald Kanugu in 1955, she has got five children with him and she is living on his land. She does, ones in a while, come to her parents home either for a visit or to till some portion of the land, but she then returns to her home. I accept the evidence of Jeremiah M'Ringera that Gerald Kanugu paid dowry for Ruth Nduru in accordance with Kimeru Customary Law, and this dowry included a heifer and an ewe. I hold that Ruth Nduru is the deceased's married daughter and is not entitled to a share of the estate of her deceased father under Kimeru Customary Law. I therefore reject and dismiss her objection to the making of the grant to the Petitioner and I dismiss her cross-petition for grant of letters of administration to administer the estate of the deceased.

I reject and dismiss the objections filed by M'MAGIRI M'RIMBERA and GEOFFREY NKONGE M'RIMBERIA and also dismiss their respective applications for a grant of letters of administration. All these objections were filed after statutory period had expired.

The petition for grant of letters of administration intestate to the estate of the deceased filed by the petitioner on 23rd December, 1992 is properly before me. I do hereby grant letters of administration intestate to Silas M'Marete M'Rimbera, the petitioner, as the deceased's eldest son, to administer the estate of the deceased, namely Kibirichia/Ntumburi/25 by subdividing it equally among the five sons of the deceased, namely: Silas M'MARETE M'RIMBERIA, JEREMIAH M'RINGERA, MUROGU KILUA, MA'MAGIRI M'RIMBERIA and GEOFFREY NKONGE M'RIMBERIA.

It has been established, to my satisfaction, that Ruth Nduru is the registered proprietor of L.R. KIBIRICHIA/NTUMBURI/1035. She has the right and liberty to move into its occupation as and when she chooses to do so, if she is not already in occupation of the same.

On the issue of costs, I note that the parties to this cause are the children of the deceased. They are all old people. I think interests of justice will be served if each party meets his own costs. It is so ordered.

Dated this 2nd March, 2001.

A.G.A. ETYANG'

JUDGE