



**In re Estate of M'Murithi Manyara alias Murithi Imanyara (Deceased) (Succession Cause 528 of 2010) [2024] KEHC 7087 (KLR) (6 June 2024) (Ruling)**

Neutral citation: [2024] KEHC 7087 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MERU  
SUCCESSION CAUSE 528 OF 2010  
TW CHERERE, J  
JUNE 6, 2024**

**BETWEEN**

**PHYLIS NGETA ..... PROTESTOR**

**AND**

**SILAS KABURU M'MURIITHI ..... ADMINISTRATOR**

**RULING**

1. M'Murithi Manyara (Deceased) died sometimes on 30<sup>th</sup> November, 2009. At the time of filing this cause, the Administrator filed two search certificates that indicate that the deceased's estate comprised of LR. Nos. Abothuguchi/Mariene/585 and 742
2. From the evidence on record, the parties agree that Deceased's family comprised of the following:  
Widows
  - i. Gladys - deceased
  - ii. Maritha - deceased
  - iii. Elizabeth Karambu M'MukethaChildren
  - i. Julieta Maithekia
  - ii. Joseph Mathenge M'Muriithi
  - iii. Joyce Makena
  - iv. Silas Kaburu M'Muriithi
  - v. Timothy Kinyuru Kinyua



- vi. Phylis Ngeta
- vii. Maria Kathure
- viii. Naomi Ruguru

3. Prior to his death, Joseph Mathenge M’Murithi (deceased Administrator) had proposed to distribute the estate as follows:
  - i. LR. Abothuguchi/Mariene/585 in equal shares to Joyce Makena, Silas Kaburu M’Muriithi and Timothy Kinyuru Kinyua
  - ii. LR. Abothuguchi/Mariene/742 to Joseph Mathenge M’Muriithi
4. Silas Kaburu M’Muriithi subsequently took over as the administrator of the estate. By his evidence he informed court that Elizabeth Karambu and her daughters Phylis Ngeta, Maria Kathure and Naomi Ruguru had not been provided for since they had already benefitted from deceased’s land parcel Timau/Timau Block 7(Nkando)/621 which he had authorised to be registered in the name of Phylis Ngeta (Protestor) and Naomi Ruguru Igweta to hold in trust for themselves, their mother Elizabeth and sister Maria Kathure Joseph. In support thereof, the witness exhibited a copy of mutation form in which Protestor and Naomi Ruguru Igweta applied for subdivision of Timau/Timau Block 7(Nkando)/621.
5. Silas Kaburu M’Muriithi additionally testified that Timau/Timau Block 7(Nkando)/621 was subsequently subdivided into four equal parts and he exhibited copies of title deeds for Timau/Timau Block 7(Nkando)/1283, 1284 and 1285 in the names Elizabeth Karambu M’Muketha, Naomi Ruguru Igweta and Maria Kathure Joseph respectively.
6. Elizabeth Karambu M’Muketha, who was the surviving widow of the deceased stated that Deceased owned shares at Nkando Co-op Society and had been allocated Timau/Timau Block 7(Nkando)/621 which he allowed to be registered in the name of her daughters Phylis Ngeta and Naomi Ruguru Igweta to hold in trust for themselves, herself and another daughter Maria Kathure Joseph.
7. The witness testified that together with her daughter Maria Kathure Joseph, they obtained judgment against Phylis Ngeta and Naomi Ruguru Igweta in MERU ELC NO. 20 OF 2019 subsequent to which Timau/Timau Block 7(Nkando)/621 was subdivided into four equal parts namely Timau/Timau Block 7(Nkando)/1282, 1283, 1284 and 1285 in the names Phylis Ngeta, Elizabeth Karambu M’Muketha, Naomi Ruguru Igweta and Maria Kathure Joseph respectively.
8. Naomi Ruguru Igweta who was the original joint owner of Timau/Timau Block 7(Nkando)/621 with the Protestor stated that the land belonged to the deceased but had been registered in their names to hold in trust for themselves and for their mother Elizabeth Karambu M’Muketha and Maria Kathure Joseph.
9. Both Elizabeth Karambu M’Muketha and Naomi Ruguru Igweta were categorical that neither them nor Phylis Ngeta, and Maria Kathure Joseph were entitled to a share of LR. Abothuguchi/Mariene/585 and LR. Abothuguchi/Mariene/742.
10. The Protestor stated that Timau/Timau Block 7(Nkando)/621 was hers and not the Deceased’s and that she was therefore entitled to a share of Deceased’s estate in LR. Abothuguchi/Mariene/585 and 742.



11. Although the copy of title deed for Timau/Timau Block 7(Nkando)/1282 was not exhibited, Protestor confirmed that it was in her name and was one of the four subdivisions of Timau/Timau Block 7(Nkando)/621.

### **Analysis and Determination**

12. I have considered the evidence on record and the issue for determination is whether the Protestor is entitled to a share of Deceased's estate in LR. Nos. Abothuguchi/Mariene/585 and 742.
13. Section 109 of the *Evidence Act*, Cap 80 places the burden of proof on him who alleges and states as follows: -

‘The burden of proof as to any particular fact lies on the person who wishes the court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie in a particular person.’

14. The foregoing section was reiterated in *Evans Nyakwana vs. Cleophas Bwana Ongaro (2015) eKLR* where it was held that:

“As a general proposition the legal burden of proof lies upon the party who invokes the aid of the law and substantially asserts the affirmative of the issue. That is the purport of Section 107(i) of the *Evidence Act*, Chapter 80 Laws of Kenya. Furthermore, the evidential burden... is cast upon any party, the burden of proving any particular fact which he desires the court to believe in its existence.....”

15. The question of burden of proof on a balance of probabilities was discussed by Kimaru, J (as he then was) in *William Kabogo Gitau vs. George Thuo & 2 Others [2010] 1 KLR 526* as follows:

“In ordinary civil cases, a case may be determined in favour of a party who persuades the court that the allegations he has pleaded in his case are more likely than not to be what took place.. ..”

16. In *Palace Investment Ltd vs. Geoffrey Kariuki Mwenda & Another (2015) eKLR*, the Court of Appeal held that:

“Denning J. in *Miller Vs Minister of Pensions (1947) 2 ALL ER 372* discussing the burden of proof had this to say; -

“That degree is well settled. It must carry a reasonable degree of probability, but not so high as is required in a criminal case. If the evidence is such that the tribunal can say; we think it more probable than not; the burden is discharged, but if the probability are equal it is not. This burden on a balance of preponderance of probabilities means a win, however narrow. A draw is not enough. So in any case in which a tribunal cannot decide one way or the other which evidence to accept, where both parties...are equally (un)convincing, the party bearing the burden of proof will loose, because the requisite standard will not have been attained.”

17. There is undisputed evidence that land parcels in Nkando were allocated to coffee farmers who were members of Nkando Nkando Co-op Society. Protestor confirmed that Deceased was a coffee farmer and a member of Nkando Co-op Society while she was not. Her evidence that she also owned shares with Nkando Co-op Society was not supported by any iota of evidence and she therefore failed to demonstrate to the satisfaction of the court that she had been allocated Timau/Timau Block 7(Nkando)/621.



18. What is even more mindboggling is that the Protestor failed to explain the basis on which Timau/ Timau Block 7(Nkando)/621 which she claimed was hers was registered in the joint names of herself and Maria Kathure Joseph as demonstrated by the green card tendered in evidence yet she denied that the said Mary Kathure Joseph was her sister.
19. The testimony by the Protestor can be likened to the incident in Luke 22:54-62 where Jesus told Peter “Before the rooster crows today, you will deny me three times.” And he went out and wept bitterly. I cannot bring myself to imagine the pain the Protestor’s words caused Mary Kathure Joseph and their mother who were present in court when Protestor testified that Mary Kathure was not her sister.
20. From the evidence on record, I find that Deceased had settled Timau/Timau Block 7(Nkando)/621 for the benefit of his wife Elizabeth Karambu M’Muketha and her four daughters Philis Ngeta, Naomi Ruguru Igweta and Maria Kathure Joseph.
21. Flowing from the foregoing, I also find that by application of Section 42 of the Law of Succession neither Elizabeth Karambu M’Muketha and her four daughters Philis Ngeta, Naomi Ruguru Igweta and Maria Kathure Joseph are not entitled to a share of LR. Abothuguchi/Mariene/585 and LR. Abothuguchi/Mariene/742.
22. In the end, it is hereby ordered as follows:
  1. The protest by Philis Ngeta filed on 13<sup>th</sup> February, 2023 vide an affidavit of protest sworn on even date is without merit and it is dismissed
  2. The estate of the Deceased shall be distributed as follows:
    - a. LR. Abothuguchi/Mariene/585 in equal shares to Joyce Makena, Silas Kaburu M’Muriithi and Timothy Kinyuru Kinyua
    - b. LR. Abothuguchi/Mariene/742 to Joseph Mathenge M’Muriithi
  3. Certificate of Confirmation of Grant to issue in terms of Order (2)(a) and (b) above
  4. Each party shall bear its own costs
  5. Mention on 03<sup>rd</sup> October, 2024 to confirm transmission

**DELIVERED AT MERU THIS 06<sup>TH</sup> DAY OF JUNE 2024.**

**WAMAE. T. CHERERE**

**JUDGE**

**Appearances**

Court Assistants - Kinoti/Munene

For Administrator - Mr. Arithi for Kiautha Arithi & Co. Advocates

For Protestor - Ms. Gumato for Kaumbi & Co. Advocates

