



**In re Estate of Jeremia Thurania Nguchine alias M'thuranira M'nguchine (Deceased)
(Succession Cause 1 of 2020) [2023] KEHC 20464 (KLR) (4 May 2023) (Judgment)**

Neutral citation: [2023] KEHC 20464 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT GARSEN
SUCCESSION CAUSE 1 OF 2020**

SM GITHINJI, J

MAY 4, 2023

BETWEEN

SUSAN KABURO JEREMIAH PETITIONER

AND

FREDRICK MUTHURI M'THURANIRA OBJECTOR

JUDGMENT

1. Jeremia Thurania Nguchine alias M'thuranira M'nguchine (deceased) died on January 16, 2017 aged 77 at the Sayda Fatima Hospital; he was then domiciled in Kenya and his last known place of residence was Lamu County.
2. According to the record, the deceased had married twice during his life time. Only one wife, Susan Kaburo Jeremiah, the Petitioner, survived him.
3. On March 21, 2018, the Petitioner, petitioned for letters of administration intestate. Consequently, a grant for letters of administration was issued and confirmed to the Petitioner on May 28, 2018 and October 6, 2020 respectively. In a letter from the chief filed by the Petitioner, he listed the following as properties of the deceased;-
 - a. Kibiricha/Kibiricha/4547
 - b. Kibiricha/Ntumburi/866 -1.5Ha/3.7acres
 - c. Kibiricha/Ntumburi/1358 -0.101Ha/0.25acres
 - d. Kibiricha/Ntumburi/1360-0.101Ha/0.25acres
 - e. Kibiricha/Ntumburi/1361-0.101Ha/0.25acres
 - f. Kibiricha/Ntumburi/1362-0.101Ha/0.25acres



- g. Kibiricha/Ntumburi/1363-0.101Ha/0.25acres
 - h. Kibiricha/Ntumburi/1364-0.101Ha/0.25acres
 - i. Kibiricha/Ntumburi/1365-0.101Ha/0.25acres
 - j. Kibiricha/Ntumburi/1368-0.080Ha/0.19acres
 - k. Lamu/Lake Kenyatta 1/48 -4.2Ha
4. On March 8, 2021, the Objector moved this Court by way of chamber summons dated March 4, 2021, seeking orders inter alia that the confirmed grant be revoked and he be allowed to file an objection. That application was partly allowed and the Petitioner directed to convene a meeting of the beneficiaries for purposes of complying with section 35, 36, 37 and 38 of the Law of Succession Act.
 5. What came out clearly upon filing of the objection was that the deceased was also survived by the following children; -
 1. Roice Kaburi M'Thuranira
 2. Fredrick Muthuuri M'thuranira
 3. Dorothy Kajuju Mugambi
 4. Henry Muthee Jeremiah
 6. Notably, the Petitioner together with the said Dorothy and Henry filed similar affidavits stating that plot Lamu/Lake Kenyatta 1/48 and Kibirichia/Kibirichia/4547 should not form part of the estate since the former was solely acquired by the Petitioner and the latter formed part of a judgment in Meru High Court Succession Cause No. 218 of 1993. The Petitioner added that 3 acres of Kibirichia/Ntumburi/866 should also be excluded from the estate since the same was sold to AIPCA Rugusu Primary School by the deceased, and the remainder given to Henry as caretaker.
 7. Following the above, this court directed that evidence be adduced viva voce. The Petitioner called a total of five witnesses.
 8. The Petitioner-PW1, adopted her written statement dated July 20, 2021 as evidence in chief. She also produced the documents in a list of documents evenly dated, as PEXH 1-4. She testified that she had no land in Meru and had never withdrawn any monies from the deceased's bank account.
 9. Henry Muthee-PW2, equally adopted his written statement dated July 20, 2021. He told the court that the deceased moved to Lamu with his mother and that the children were not to inherit the Lamu plot.
 10. Dorothy Kajuju-PW3, also adopted her written statement evenly dated. She reiterated that the Lamu plot was for the Petitioner and that the deceased had told them that they [the children] were to get the plots in Meru.
 11. Joseph Muriuki-PW4 and Michael Marangu Nkoru-PW5, similarly adopted their written statements both dated September 28, 2021 as evidence.
 12. On his part, the objector, now also deceased, adopted his replying affidavit dated September 30, 2021 as evidence in chief. He testified that the deceased, his father, owned the parcels Kibiricha/Ntumburi/866 measuring 1.5Ha, Kibiricha/Ntumburi/439 measuring 1.1Ha and Lamu/Mpeketoni 1/48 measuring 4 Ha. That the deceased also owned a tuktuk and a power saw both valued at approximately Kshs. 300,000/-. He added that Kibirichia/Kibirichia/ 4547 belonged to one of their cousins. According



to the Objector, the Petitioner acquired a grant and the deceased's estate solely in her favour without informing the children. He urged the court to share the deceased estate equally.

13. He told the court on cross-examination that they never lived in Lamu but they only visited from time to time. He was not aware when the Lamu plot was bought but he was certain that the deceased and the Petitioner moved to Lamu in the year 1989. He testified that his mother was the second wife who lived in Meru throughout her life.
14. The Objector was referred to his affidavit where he stated that the Petitioner had acquired another land in Lamu after selling her inherited land in Murunja, Meru but he did not know that land's reference number. That the deceased had warned them not to go into the said land. Regarding this statement, the Objector testified that the Lamu Plot herein belonged to the deceased and not the Petitioner.
15. Parties agreed to filing written submission. Only the Petitioner complied. I have carefully read and weighed those submissions and do find the issues for determination as follows;
 1. Whether Plot Lamu/Lake Kenyatta 1/48 forms part of the deceased's estate.
 2. Distribution of the estate.

Analysis and Determination

16. The parties herein seemingly agreed that Kibirichia/Kibirichia/4547 and 3 acres out of Kibirichia/Ntumburi/866 be excluded from the estate. What remained in dispute regards the ownership of Lamu/Lake Kenyatta 1/48[the Lamu Plot]. According to the Petitioner, she solely purchased the Lamu plot but the same was registered in the deceased's name, as the family head, in accordance with Meru customs. The two children of the deceased, Dorothy and Henry, supported this claim. They testified that their father had warned them not to expect any inheritance from the Lamu plot since the same belonged to the Petitioner.
17. The Objector is of a different opinion. What I find interesting however, is that he admitted that the deceased had warned them about a certain plot in Lamu said to be purchased by the Petitioner. He was indeed aware that the Petitioner had purchased land in Lamu only that he did not know the reference number.
18. In the absence of proof of another plot in Lamu owned by the Petitioner, and bearing in mind the testimonies given by both sides, I am inclined to stand by the Petitioner's allegations. The Objector's allegations that the said Henry and Dorothy had been financially compromised by the Petitioner were not substantiated. In the circumstances, I find that the Plot Lamu/Lake Kenyatta 1/48 does not form part of the deceased's estate.
19. What is left for determination therefore is the mode of distribution of Kibiricha/Ntumbiri/1358, 1360, 1361, 1362,1363,1364,1365, 1368 and the remainder of Kibiricha/Ntumbiri/866 being 0.7 acres.
20. The deceased died intestate in 2017, long after the Law of Succession Act had come into force. Distribution of his estate is therefore subject to the provisions of the Law of Succession Act, and especially Part V thereof, Section 40 which provides; -
 40. Where intestate was polygamous
 - (1) 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.

- (2) The distribution of the personal and household effects and the residue of the net intestate estate within each house shall then be in accordance with the rules set out in sections 35 to 38.”

22. In the case of *Mary Rono -v- Jane Rono & another* [2005] eKLR, the Court had this to say about Section 40 of the *Law of Succession Act*: -

“My understanding of that section is that while the net intestate estate is to be distributed according to houses, each house being treated as a unit, yet the Judge doing the distribution still has a discretion to take into account or consider the number of children in each house. If Parliament had intended that there must be equality between houses, there would have been no need to provide in the section that the number of children in each house be taken into account.”

23. Similarly, Lenaola, J (as he then was) *in Re Estate of John Muia Kalii- (Deceased)* [2008] eKLR explained:

“In customary law, on the other hand, the matter is complicated by the rules of division amongst the “house” by which there is an equal division amongst the “houses” irrespective of the number of children in each “house”. We believe this rule to be highly unfair and discriminatory... We think that is necessary, for the purpose of determining beneficial interests, to make a division of the net estate between the “houses”. This accords with customary law and will work out well in practice since the property of each “house” is normally treated as independent and separate from the other. As to the mode of division, we have already stressed that the present system of equal division irrespective of the number of children in each “house” is inequitable. We believe that the fairest division would be one based on the number of children in each “house” but also adding to the number of children, the wife as an additional dependants especially to cater for the wife who has no children.”

24. It is clear therefore that the estate shall be distributed according to houses taking into account the number of children in each house with any surviving widow being counted as an additional unit. In the present case, the 1st house has only 1 unit, being the surviving spouse; and the second house 4 units being the number of children that survived the deceased. This means that the net intestate estate shall be shared equally amongst 5 units as follows; -

- i. Kibiricha/Ntumburi/1358, 0.101Ha/0.25acres –to Fredrick Muthuuri M’thuranira.
- ii. Kibiricha/Ntumburi/1360, 0.101Ha/0.25acres –to Susan Kaburo Jeremiah.
- iii. Kibiricha/Ntumburi/1361,0.101Ha/0.25acres- to Henry Muthee Jeremiah.
- iv. Kibiricha/Ntumburi/1362,0.101Ha/0.25acres- to Dorothy Kajuju.
- v. Kibiricha/Ntumburi/1363,0.101Ha/0.25acres- to Roice Kaburi.
- vi. Kibiricha/Ntumburi/1364,0.101Ha/0.25acres- to Fredrick Muthuuri and Roice Kaburi.



- vii. Kibiricha/Ntumburi/1365,0.101Ha/0.25acres- to Henry Muthee and Dorothy Kajuju.
- viii. Kibiricha/Ntumburi/1368, 0.080Ha/0.19acres- to Susan Kaburo.
- ix. Reminder of Kibiricha/Ntumburi/866 being 0.7acres – to Henry Muthee since there was no dispute that he has always lived thereon.

Parties will bear own costs.

Judgment read and signed in the open court in presence of; -

Mr George Kariuki for the Respondent.

JUDGMENT READ, SIGNED AND DELIVERED VIRTUALLY AT GARSEN THIS 4TH DAY OF MAY, 2023.

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S.M. GITHINJI

JUDGE

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