



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MERU
(CORAM: CHERERE-J)
SUCCESSION CAUSE NO. 541 OF 2010
IN THE MATTER OF THE ESTATE OF M'IKIRIA MUTHURI (DECEASED)
AND
IN THE MATTER OF PROTEST
BETWEEN
DAVID GITONGA.....1ST PROTESTOR/APPLICANT
GEMMA GAKIL.....2ND PROTESTOR/APPLICANT
AND
MARIA KABICHIA GIKUNDI..... PETITIONER/RESPONDENT
RULING

Introduction

1. M'IKIRIA MUTHURI (*Deceased*) died sometimes in 1968. His estate comprises of LR.NO. NYAKI/THUURA/645.
2. Deceased had father and had 3 wives as follows:

1st house

FATUMA IRIA – widow (deceased)

Children

1. Ntakira (deceased)
2. Ngata (deceased)
3. Nahashon Muthuri (deceased)

2nd house

KALIUNTU M'KIREA– widow(deceased)

Children

1. Nteere - (deceased)

2. Margaret Mukawagaiti- (deceased)

3. Maria Kabichia (Petitioner)

4. Karinthoni Kirea- (deceased)

3rd house

KANYAI M'KIREA – widow(deceased)

Children

1. Kathambi - (deceased)

2. Raheri

3. Kiogora - (deceased)

4. Julius

5. Mbobori - (deceased)

6. Isaya

7. The 1st Protestor is son to Nahashon Muthuri (deceased) whereas the 2nd Protestor is daughter to Karinthoni Kirea- (deceased) who are deceased's son and daughter from the 1st and 2nd houses respectively.

3. Letters of Administration were issued to **Maria Kabichia Gikundi (Petitioner/Respondent)** on 10th November, 2011. Subsequently, a Certificate of Confirmation of Grant was issued on 09th May, 2012 distributing the estate solely to **Maria Kabichia Gikundi**.

1st Protestor's /Applicant's Case

4. David Gitonga (1st Protestor/Applicant) by summons for revocation dated 01st March, 2016 and filed on 07th March, 2016 contends that the Petitioner/Respondent filed the cause secretly and failed to include the Protestors and other beneficiaries thereby disinheriting them from land that they have occupied all their life.

5. GEMMA GAKII (1st Protestor/Applicant) by her affidavit sworn on 21st September, 2020 contends that her deceased mother was buried on the disputed property and that she has lived on the said all her life and is a beneficiary through her mother who is daughter of deceased.

6. Regina Kagwiria another beneficiary and daughter of deceased's daughter Margaret Mukawagaiti (deceased) similarly faults the Petitioner/Respondent for disinheriting them.

Petitioner's/Respondent's case

7. Maria Kabichia Gikundi (Petitioner/Respondent) in her response contends that the 1st Protestors father was given **LR. NYAKI/THUURA/1287** by the deceased but that he sold it as evidenced by a green card in support thereof. It was also her evidence that the deceased gave unknown land parcels in THUURA to each of his three wives which they disposed off. It was her evidence that the suit property was given to her mother and she was the sole beneficiary since her siblings were deceased and that her nephew and nieces have no right to claim it.

Analysis and Determination

8. I have considered the affidavit evidence on record and submissions for the respective parties. The gravamen of this Protest revolves around distribution of **LR.NO. NYAKI/THUURA/645** and the issue for determination is identification of those entitled to benefit from the deceased's estate.

9. It is not disputed that the protestors and other grandchildren of the deceased reside on the disputed land whereas the Petitioner/Respondent neither resides nor cultivates the said land.

10. Section 40 of the Law of Succession Act (Act) stipulates how the net intestate ought to devolve where the deceased was polygamous in the following terms: **-(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.**

11. In the persuasive decision in the case of **Estate of Veronica Njoki Wakagoto (deceased) (2013) eKLR**, Musyoka J stated as follows: -

“.....grandchildren can only inherit their grandparents’ indirectly through their own parents, the children of the deceased. The children inherit first and thereafter grandchildren inherit from the children. The only time grandchildren inherit directly from their grandparents is when the grandchildren’s own parents are dead. The grandchildren step into the shoes of their parents and take directly the share that ought to have gone to the said parents.”

12. The foregoing holding applies to this case in that the deceased’s grandchildren can only inherit the shares that would have been inherited by their parents, not as individuals but jointly as a household from where they would then distribute the shares among the children in each household.

13. Petitioner/Respondent’s contention that the deceased had during his lifetime settled any of his property to or for the benefit of any of his children, wives or house was not proved and the provisions of Section 42 of *the Act* that mandate the court to take into account gifts *inter vivos* in determining the share of the net intestate estate finally accruing to the child, grandchild or house are therefore not applicable.

14. In view of the foregoing, I am persuaded that the Protestors have made out a case for revocation. The Petitioner/Respondent who is sister to the Protestors/Applicants’ deceased parents does not hold a better claim to his father’s estate and she has no right to acquire title to the to the exclusion of other beneficiaries.

15. In view of the foregoing, I am persuaded that the Protestors have made out a case for revocation of the grant issued in favour of the Petitioner/Respondent to their exclusion.

16. It is therefore hereby ordered that:

1. Maria Kabichia Gikundi, David Gitonga and Gemma Gakii are hereby appointed joint administrators of deceased’s estate

2. The transmission of LR.NO. NYAKI/THUURA/645 to Maria Kabichia Gikundi is hereby cancelled and the Land Registrar is directed to revert ownership to the name of M’ikiria Muthuri (Deceased).

3. Upon issuance of the joint, letters of administration, Maria Kabichia Gikundi, David Gitonga and Gemma Gakii shall within 60 days apply for confirmation of the grant after identifying respective shares of each of the beneficiaries to the estate

4. Each party shall bear it sown costs

DATED AT MERU THIS 04TH DAY OF MARCH,2021

T. W. CHERERE

JUDGE

Court Assistant - Morris Kinoti

For Petitioner/Respondent – Present in person

For 1st Protestor/Applicant- N/A for M/s Kimathi Kiara & Co. Advocates

For 2nd Protestor/Applicant- N/A for Joshua Mwiti Law Advocates