



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAKURU

SUCCESSION CAUSE NUMBER 45 OF 2005

IN THE MATTER OF THE ESTATE OF THE LATE BILHA MUTHONI

J U D G M E N T

1. Bilha Muthoni died on 31st July 2001. She was survived by six (6) children, all adults aged between 35 and 46 years. Four (4) daughters and two (2) sons.
2. She was the registered proprietor of Pangani Plot 17, Kiambogo Settlement Scheme Plot 996 and Njoro Plot 28.
3. Grant of Letters of Administration of Estate intestate was made on 8th June 2005 to one of the daughters Esther Murani Munyinyi.
4. On 19th November 2018, the Chief Afraha Sub-Location wrote to the Deputy Registrar to the effect that the family, the children of the deceased had given the authority to administer their late mother's estate to Esther and their brother Danson Minathi Mugo.
5. On 29th November 2018 there was filed a Summons for Confirmation of Grant in which it was proposed that the three properties be shared equally between Esther Murani Munyinyi and Danson Minathi Mugo. Only one beneficiary signed the consent, Linus Mugo Muthoni.
6. On 2nd December 2019, Esther Murani Munyinyi swore an affidavit forfeiting her share of the estate to the sharing by her siblings.
7. On 5th December 2019, Linus Mugo Muthoni filed an affidavit of protest against the Summons for Confirmation of Grant, on the ground that the petitioners were seeking to sell the estate and distribute proceeds of the sale.
8. He deponed that he had the right to property where he occupied the house in accordance with his mother's wishes. He asked that the property be leased and the proceeds of lease be shared by the beneficiaries.
9. On 22nd January 2020 the court was informed that the members of the family had agreed, in a consent, to let the protestor keep the house, and the rest of the state be shared by the others. However he had rejected the consent saying that he wanted to keep the house and also get a share of the share of the shamba in Kiambogo.
10. The matter was sent to mediation, but some of the family members were out of the country. The matter was fixed for hearing.
11. On the hearing date, counsel for Esther and the other siblings told the court that though they had signed a consent in which they were giving the protestor the house in Pangani, which consent he had rejected, they were no longer interested in the consent. They now wanted the estate distributed by the court. On his part the objector told the court that he had no objection to the distribution of the estate equally but that he wanted the house as well. His sister Madrine told the court that the protestor had already sold one property, their mother's house at Kaloleni, soon after her death. His brother Danson agreed, that the house be sold the proceeds shared and the rest of the property be shared equally.
12. Nancy the eldest of the children told the court that they just wanted the court to distribute the estate. The protestor insisted that their mother left the house to them in case they had problems. That he was the one with problems and the house was his.
13. From all these the only issue is how the property of the deceased ought to be distributed.
14. The applicable law is **Section 38 of the Law of Succession Act** which states;

“Where an intestate has left a surviving child or children but no spouse, the net estate intestate shall, subject to the provisions of Section 41 and 42 devolve upon surviving child if there be only one or shall be equally divided among the surviving children.”

15. Bilha was survived by six (6) children, one of them has forfeited her share in the estate. Hence, the estate is to be shared equally among the five (5) children. The house cannot be split into five (5), neither can the Njoro plot. However the Kiambogo shamba is five (5) acres.

16. Hence the said properties will be shared equally thus;

1) The house at Pangani Plot Number 17 and Njoro Plot Number 28 be sold and the proceeds be shared equally among the children of the deceased namely;

- 1. Nancy Njoki Gitati**
- 2. Madrine Wawira Muthoni Mugo**
- 3. Danson Munathi Mugo**
- 4. Linus Mugo Muthoni**
- 5. Faith Muriko**

Except Esther Murangi Munyinyi

2) Kiambogo Settlement Scheme Plot Number 996 be shared equally among the five (5) children namely;

- 1. Nancy Njoki Gitati**
- 2. Madrine Wawira Muthoni Mugo**
- 3. Danson Munathi Mugo**
- 4. Linus Mugo Muthoni**
- 5. Faith Muriko**

Except Esther Murangi Munyinyi

17. The protest is dismissed with no orders as to costs.

DATED, SIGNED AND DELIVERED VIA EMAIL THIS 12TH DAY OF OCTOBER, 2021.

Mumbua T. Matheka

Judge

In the presence of:

Edna Court Assistant

Protestor in person

Mr. Kiburi for the Respondent