



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

SUCCESSION CAUSE NO. 113 OF 2008

IN THE MATTER OF THE ESTATE OF STANLEY MUGAMBI M' ITHILI (DECEASED)

FLORENCE MAKENA.....PETITIONER

VERSUS

ARIN NKATHA STANLEY.....OBJECTOR

JUDGMENT

1. The deceased herein died on 20/06/2007 leaving behind one asset **Antubetwe/ Mjuonge/ 648. Florence Makena Muchiri** petitioned for letters of administration on 26/3/2008 listing **Caroline Kathambi, Severina Gaiti and Jackline Kathambi** as daughters of the deceased. Grant of letters of administration was issued to the petitioner on 13th November 2008.
2. The objector herein lodged objection proceedings on 10th March 2009 stating that she is a wife of the deceased with whom she was blessed with two issues **Ruth Kanana and Angelo Munene**. On 8th May 2019 this court determined the objection proceedings and held that there was no prove that the deceased sired Severina Gaiti and Jackline Kathambi with Kagendo as alleged by the petitioner but the objector had proved she is a wife of the deceased and provided birth certificates to prove her daughters were children of the deceased.
3. Consequently, the court revoked the grant issued to Florence Makena Muchiri and issued a fresh grant to Arin Nkatha Stanley.
4. **John Maruri M' Ibere, Joel Kilaa M' Kiambi, John Meme Bonface and M' Munoru M' Mugongo** filed an application on 21st October 2006 seeking to be enjoined as interested parties in these proceedings for they were bona fide purchasers of the estate property; a matter that is also the subject of the court determination in **Meru Cmcc No. 17 of 2012**. The court on 26th July 2017 determined their application and invoking Rule 41 of the Probate and Administration Rules and Order 36 of the Civil Procedure Rules set aside the said parcels to abide by the determination of the court in Meru Cmcc No. 71 of 2012. This procedure should not be mistaken for conferment of title upon the purchasers. It simply allows the determination of ownership of the disputed properties by the competent court, i.e. ELC. The determination thereof is then presented to and given effect by this court.
5. The foregoing recapitulation of the events herein leaves no doubt that the only issue left for determination is distribution of the estate of the deceased. The petitioner and the objector have both filed affidavits proposing their modes of distribution. They have also filed written submissions which I have duly considered.

Distribution of estate

6. As I had earlier mentioned in my ruling dated 26th July 2017, the following properties are set aside to await determination of ownership dispute i.e.

Claim by John Maruri M' Ibere- 0.10 Acre

Claim by Joel Kilaa M' Kiambi- 22 by 100 ft

Claim by John Meme Bonface-22 by 100 ft

Claim by M' Munoru M' Mugongo-25 by 100 ft

7. The balance in the part which is subject of distribution herein.
8. The deceased herein died intestate and left behind a spouse and children. **Section 35 of the Law of the Law of Succession Act** is

relevant; but it must be read with such alterations, modifications and adaptations as to bring it in conformity with the Constitution. See section 7 of the Sixth Schedule of the Constitution. The raw section 35 provides;

35. Where intestate has left one surviving spouse and child or children

(1) Subject to the provisions of section 40, where an intestate has left one surviving spouse and a child or children, the surviving spouse shall be entitled to—

(a) the personal and household effects of the deceased absolutely; and

(b) a life interest in the whole residue of the net intestate estate: Provided that, if the surviving spouse is a widow, that interest shall determine upon her re-marriage to any person.

9. The estate shall therefore be distributed as follows;

Nyambene/antubetwe-Njuone/648

Arin Nkatha to hold it on her own behalf and that of Ruth Kanana & Angelo Munene..... 2.25 ACRES

Caroline Kathambi Mugambi.....0.75 Acres

Grant accordingly confirmed.

Dated signed and delivered in open court this 13th day of February, 2020

F. GIKONYO

JUDGE

In presence of

E. Kimathi for administratrix

Harun Gitonga holding brief for B.G Kariuki for petitioner

F. GIKONYO

JUDGE