



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NYERI**

**SUCCESSION CAUSE NO. 292 OF 2010**

***IN THE MATTER OF THE ESTATE OF ISAAC MURIU WAIRIA (DECEASED)***

**JANE WAMBUI MURIU.....APPLICANT**

**-VERSUS-**

**JOSEPH WAIRIA MURIU.....1<sup>ST</sup> PROTESTER**

**GEORGE KIMANI MURIU.....2<sup>ND</sup> PROTESTER**

**FRANCIS GICHOHI MURIU.....3<sup>RD</sup> PROTESTER**

**JUDGMENT**

This judgment is delivered in rather unfamiliar and unprecedented circumstances. The entire world has been hit by a respiratory disease known as COVID-19 or corona virus. It is viral in nature spreading mainly through human contact although, lately, it has been suggested that it could be airborne as well. So far, it has no known cure but its spread can be contained if human contact or interactions can be restricted. Measures have been taken the world over towards this end in what is now popularly referred to as 'social distancing'. It is for this reason that this judgment is delivered via skype communication or video conferencing.

The applicant and the protesters are some of the children of the late Isaac Muriu Wairia (also known as Muriu Wairia or Mureu Wairia) who died on 9 July 1989 at Muthuthiini village, Thanu Location in Nyeri County.

The applicant together with one of her brothers, Simon Bindu Mureu, petitioned for grant of letters of the administration intestate of the deceased's estate on 15 April 2010. The grant was subsequently made in their joint names on 7 September 2010.

Unbeknown to this Honourable Court, Simon Bindu Mureu had died on 12 August 2010, a little over a month before the grant was made. Against this background, the applicant was appointed as the sole administratrix of her father's estate.

By a summons dated 12 November 2018, the applicant sought to have the grant confirmed and in the affidavit in support of the summons she listed the following assets as comprising the deceased's estate:

- a) Title No. Gikondi/Gikondi/1105 (measuring approximately 0.39 hectares)
- b) Title No. Gikondi/Gikondi/366 (measuring approximately 0.56 hectares)
- c) Title No. Gikondi/Gikondi/1113 (measuring approximately 0.94 hectares)

She proposed to have these parcels of land shared out equally among the deceased children or where they are deceased, their shares be allocated to their estates; she listed these beneficiaries as follows:

- a) Emily Njoki Mwangi
- b) Joseph Wairia Muriu
- c) Simon Bundi Muriu (estate of)

- d) Agnes Wanjiku Muriu (estate of)
- e) George Kimani Muriu
- f) Jane Wambui Mureu
- g) Francis Gichohi Muriu

Some of the applicant's brothers were not satisfied with this scheme and it is for this reason that they filed a joint affidavit of protest in which they gave an alternative scheme for distribution of their father's estate. In the affidavit, they have proposed as follows:

1. Title No. Gikondi/Gikondi/1113

To be shared equally between:

- a) Joseph Wairia Muriu
- b) George Kimani Muriu
- c) Francis Gichohi Muriu
- d) Estate of Simon Bindi Muriu

2. Title No. Gikondi/Gikondi/1105

To be shared equally between:

- a) Joseph Wairia Muriu
- b) George Kimani Muriu
- c) Francis Gichohi Muriu
- d) Estate of Simon Bindi Muriu

3. Title No. Gikondi/Gikondi/366

Jane Wambui Mureu to get 0.28 ha and the balance of 0.28 ha to be shared equally between:

- a) Joseph Wairia Muriu
- b) George Kimani Muriu
- c) Francis Gichohi Muriu
- d) Estate of Simon Bindi Muriu

Their rationale for distribution of the estate in this manner is that prior to his death, the deceased had shown each of his sons where to build and settle; they have thus developed certain parts of the estate, in particular on Title No. Gikondi/Gikondi/1113 and uprooting them from there will cause them unnecessary hardship.

They also deposed that their sister, Emily Njoki Muriu has renounced her inheritance and so too are the children of their other sister Agnes Wanjiku Muriu who is deceased.

They are, however, in agreement that the share due to their late brother, Simon Bindi Muriu, should be given to his three children whom they have named as:

- a) Muriu Bindi
- b) Mugambi Bindi
- c) Wangui Bindi

This is the same position they adopted when their protest came up for hearing; they reiterated that they all live on Title Number Gikondi/Gikondi/1113 and that nobody has settled on Title Numbers Gikondi/Gikondi/1105 or 366. The 2<sup>nd</sup> protester also testified that this

latter parcel was reserved for their sisters in the event their marriages did not work out. It is where their parents are buried together with their deceased siblings.

Emily Njoki Muriu testified, apparently in support of her brothers' cause and declared that she has no interest in her father's estate.

The applicant, on the other hand, insisted that the estate should be distributed as she has proposed. Even then, she testified that she is comfortable with the proposed distribution of Title No. Title No. Gikond/Gikondi/1105. Her major bone of contention is that she should have an equal share of Title Number Gikondi/Gikondi/1113.

The scheme for distribution of a deceased's intestate estate amongst children where there is no surviving spouse is clearly spelt out in section 38 of the Law of Succession Act, cap. 160. It states as follows:

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

Sections 41 and 42 to which reference has been made wouldn't apply in the present case because the former section deals with holding the share of the estate in trust for children where they are below eighteen years of age. All the deceased's children here are adults. The latter section deals with such property as has been settled or appointed by the deceased in his lifetime for the benefit of any child; there is no evidence that such was the case here.

It follows that the estate ought to be shared out equally amongst the surviving children.

Having said that, it is apparent from the evidence that one of the daughters of the deceased has effectively renounced her inheritance. The other daughter, it is agreed, is deceased. But nobody from her side stepped forward as representing her estate and claimed any share of the estate on her behalf. According to the protester, her children have no interest in the maternal grandfather's estate. I do not have any reason to doubt the protester's evidence in this regard because if these children had any interest, they would have obtained the requisite representation to pursue their mother's share of the estate.

This leaves us with five children, four sons and one daughter who is the applicant. Of these sons one is deceased but again parties appear to be in agreement that his surviving children, who are all adults should get whatever share is due to him.

Going by their registration numbers, the three parcels appear to be in the same locality; at least it was never suggested, and of course no evidence was given, to the effect that, besides the developments the protesters are alleged to have made on Title Number Gikondi/Gikondi/1113, any of the parcels is more valuable than the other.

My rough calculation shows that the total acreage of these parcels is 1.89 hectares or 4.668 acres. Divided into five equal parcels, each parcel will measure approximately 0.94 acres. This is what each of the deceased's children is entitled to.

The applicant has been allocated 0.28 ha of Title No. Gikondi/Gikondi/366 which, in her own words, she is comfortable with; in any event, it is on this parcel that her parents are buried and I suppose one of the advantages she has in getting a share of this particular parcel is that she will have unrestricted access to her parents' graveyard. Apart from seeking for an equal share of the estate, she did not say why she would prefer a share from one particular parcel rather than the other. This would imply that as long as she can get whatever is equivalent to what the rest of the children are getting, she would not have any problem.

If my understanding is correct, I need not do anything more than enhance the applicant's share of 0.28 ha in Title No. Gikondi/Gikondi/366 to 0.38 ha or 0.94 acres and reduce the share due to the rest of the protesters in that property by the same margin. Accordingly, I allow the protest to that extent only.

For avoidance of doubt the deceased's estate shall be distributed as follows:

1. Title No. Gikondi/Gikondi/1113

To be shared equally between:

- a) Joseph Wairia Muriu
- b) George Kimani Muriu
- c) Francis Gichohi Muriu
- d) Estate of Simon Bindi Muriu (or registered in the names of his children as owners in equal shares)

2. Title No. Gikondi/Gikondi/1105

To be shared equally between:

- a) Joseph Wairia Muriu

b) George Kimani Muriu

c) Francis Gichohi Muriu

d) Estate of Simon Bindi Muriu (or registered in the names of his children as owners in equal shares)

3. Title No. Gikondi/Gikondi/366

Jane Wambui Mureu to get 0.38 ha and the balance of 0.18 ha to be shared between:

a) Joseph Wairia Muriu

b) George Kimani Muriu

c) Francis Gichohi Muriu

d) Estate of Simon Bindi Muriu (or registered in the names of his children as owners in equal shares)

The grant made to the applicant is confirmed in the foregoing terms. The contestants being siblings, shall bear their respective costs.

**Dated, signed and delivered on this 9th April 2020**

Ngaah Jairus

**JUDGE**