



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT CHUKA

SUCCESSION CAUSE NO. 5 OF 2019

IN THE MATTER OF ESTATE OF THE LATE M'THARA M'MUTHURI alias KATHARA MUTHURI (DECEASED)

AND

GITARI M'THARA.....PETITIONER

VERSUS

CHARITY KARIMI M'THARA.....APPLICANT/PROTESTOR

J U D G E M E N T

1. This cause relates to the estate of the late **M'THARA M'MUTHURI alias KATHARA MUTHURI** (Deceased) who died on 21st October 1996 domiciled at Chogoria Location. The deceased died and left the following dependants as per the Area Chief's letter dated 14th January 2002.

- i) Eunice Micheni Kathara (1st widow now deceased)
- ii) Agnes Kanjiri Kathara (2nd widow)
- iii) Gitari M'Thara
- iv) Ndege M'Thara (deceased)
- v) Gitonga Kathara
- vi) Kaimuri Kiambi
- vii) Karimi Mutegi
- viii) Makena Kimandi
- ix) Kagendo Mbabu
- x) Kathomi Kathara

3. The only asset that comprise that estate is that property known as Mwimbi/Chogoria/59. Gitari M'Thara was appointed the administrator of the estate on 25th March 2002 vide **Chuka Senior Resident Magistrate's Court Succession Cause No. 8 of 2002** and the grant was confirmed on 15th May 2003. The same however was later revoked by this court on 15th July 2019 on grounds of concealment by the appointed administrator and for want of jurisdiction by the lower court. Charity Karimi M'Thara and Agnes Wanjiru M'Thara were appointed joint administrators of the estate of the deceased herein and given liberty to move this court for confirmation of grant before expiry of the statutory period of 30 days because of the age of this cause.

4. Agnes Kanjiru Kathara vide Summons for Confirmation of Grant dated 9th September 2019 moved this court for confirmation of grant and listed the following as current surviving dependants;

- (i) Gitari M'Thara

- (ii) Fredrick Gitonga Kathara
- (iii) Margaret Gakii Ndege (widow to the late Ndege Kathara)
- (iv) David Kaburu Mburia
- (v) Anestine Kagendo Kithara
- (vi) Jackline Makena Kathara
- (vii) Rael Kaimuri Kithara &
- (viii) Emily Kathomi

5. The Applicant proposed to have the estate distributed as follows:

- a) Gitari M'Thara - 0.93 ha
- b) Fredrick Gitonga Kathara - 0.81 ha
- c) Margaret Gakii Ndege - 0.93 ha
- d) David Kaburu Mburia - 0.63 ha
- e) Charity Karimi M'Thara
- f) Agnes Kanjiru Kathara
- g) Anestine Kagendo Kathara
- h) Jackline Makena Kathara
- i) Rael Kaimuri Kathara
- j) Emily Kathomi - 0.505 ha
- k) Makuini Tea Buying Centre - 0.065 ha

6. The Applicant's proposal is supported by Gitari M'Thara, Fredrick Gitonga Kathara, Margaret Gakii Ndege and David Kaburu Mburia.

7. Charity Karimi M'Thara on the other hand objected to the Applicant's proposal and filed an affidavit of protest sworn on 7th October 2019. The protestor has given the following list of surviving dependants;

- (i) Anestine Kagendo Kathara
- (ii) Charity Karimi M'Thara
- (iii) Jackline Makena Kathara
- (iv) Rael Kaimuri Kathara
- (v) Emily Kathomi Kathara
- (vi) Gitari M'Thara
- (vii) Margaret Gakii Ndege
- (viii) Fredrick Gitonga Kathara

8. The protestor has given the following proposal in the distribution of the estate.

- (a) Anestine Kagendo Kathara - 1.05 acres

- (b) Charity Karimi M'Thara - 1.05 acres
- (c) Jackline Makena Kathara - 1.05 acres
- (d) Rael Kaimuri Kathara - 1.05 acres
- (e) Emily Kathomi - 1.05 acres
- (f) Gitari M'Thara - 1.05 acres
- (g) Margaret Gakii Ndege - 1.05 acres
- (h) Fredrick Gitonga Kathara - 2.05 acres
- (i) David Kaburu Mburia - 1.50 acres
- (j) Makuini Tea Buying Centre - 0.15 acres

8. In her written submissions through her learned counsel P.M Mutani & Co, the protestor has submitted that all the children of the deceased both male and female should be treated equal and that all should get an equal share contending that the Law of Succession Act does not provide discrimination in the distribution of the estate. The protestor has however not given reasons why Fredrick Gitonga Kathara should be favoured with a bigger share as compared with other children of the deceased. She has submitted that the family has agreed to recognize one purchaser David Kaburu Mburia and a beneficiary Makuini Tea Buying Centre.

9. This court has considered both proposals of distribution from the Applicant and the protestor. It is true that both the Statue (Law of Succession Act) and the Constitution of Kenya has no room for any discrimination of any kind. **Article 27(4) of Constitution of Kenya** expressly provide as follows:-

" The State shall not discriminate directly or indirectly against any person on any ground including race, sex, pregnancy, marital status....."

10. In this cause, it is apparent that the only surviving dependants currently left are children and **Section 38 of Law of Succession Act** does provide that where a deceased person leaves only a child or children, the estate should be equally divided among the children.

11. Following at the proposal made by the Applicant to begin with, it is obvious that the same is not hinged on the law because the shares given to the surviving children are not equal. The Applicant has not given reasons for the basis behind uneven distribution. On the other hand, the protestor save for the unequal share going to Fredrick Gitonga, has largely suggested that the estate of the deceased be distributed equally to all the children and suggested that the shares given to David Kaburu Mburia and MakuiniTea Buying Centre be catered for on account of family agreement.

12. This court having taken into consideration the dictates of the law and the consent of the family members in this cause, hereby confirms the grant issued on 24th July 2019 in the following terms;

L.R. MWIMBI/CHOGORIA/59

- i) David Kaburu Mburia - 0.63 ha
- ii) Makuini Tea Buying Centre - 0.65 ha
- iii) Anestine Kagendo Kathara
- iv) Charity Karimi M'Thara
- v) Jackline Makena Kathara
- vi) Rael Kaimuri Kathara
- vii) Emily Kathomi Kathara
- viii) Gitari M'Thara
- ix) Margaret Gakii Ndege
- x) Fredrick Gitonga Kathara - To share the remaining share equally

In order to bring this matter to an end, I direct the Deputy Registrar to execute all the necessary documents of those parties who may be

reluctant to cooperate and I further direct the Registrar of Lands to give effect to the orders of this court by liaising with the District Surveyor who should be given security by OCS Chogoria Police Station when carrying out the subdivision of the estate. For now I shall make no order as to costs each party to pay own costs but the costs of the surveyor shall be shared equally by all the beneficiaries.

Dated, signed and delivered at Chuka this 4th day of May 2020.

R.K. LIMO

JUDGE

Judgement signed, dated and delivered in the open court in presence of Mutani Advocate and the Applicant.

R.K. LIMO

JUDGE

4/5/2020