



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT MERU**

**SUCCESSION CAUSE NO. 15 OF 2014**

**IN THE MATTER OF THE ESTATE OF NAHASHON M'ITHIRI M'KIAMBATI (DECEASED)**

**MORRIS EVANS MUTUMA.....PETITIONER**

**VERSUS**

**NICHOLAS MUGAMBI KIAMBATI.....1<sup>ST</sup> OBJECTOR**

**JOY KANYUA KIAMBATI.....2<sup>ND</sup> OBJECTOR**

**J U D G M E N T**

1. **NAHASHON M'ITHIRI M'KIAMBATI ("the deceased")** died at Kiirua Hospital on 14/12/2013. He left behind 5 children, namely, **Nicholas Kiambati, Susan Nkatha Ithiri, Joy Kanyua Kiambati, Mercy Naitore Mosoti** and **Morris Evans Mutuma**. On 21/4/2014, **Morris Evans Mutuma ("Mutuma")** petitioned for grant of letters of administration which was issued to him on 27/5/2014.
2. On 1/9/2014, he applied for confirmation of that grant which was met by an application for revocation dated 1/12/2014 by the two objectors. The 1<sup>st</sup> objector subsequently died and the 2<sup>nd</sup> objector remained as the sole objector to prosecute the application for revocation.
3. The objector contended that the deceased had left behind a Will dated 4/2/2013 which both **Mutuma** and **Susan Nkatha Ithiri and Mercy Naitore Mosoti** disputed. On the other hand, they insisted that the deceased had on 3/3/2012 called a meeting in his home and distributed his properties.
4. On the morning of 24/9/2019, the matter came up for hearing and the first witness to take the stand was **Julius Kiogora Arithi, Advocate** who drew the Will and produced the same. After he had closed his testimony, the parties asked for time to discuss the matter. The Court adjourned the matter to the afternoon to enable the parties come up with a settlement.
5. When the parties returned, they informed the Court that they had discovered that there were properties that were missing both in the Will and the minutes of the meeting of 3/3/2012. In view thereof, they recorded a consent to the effect that the Will be nullified to give room for a settlement, the grant be revoked and both **Mutuma** and the objector be appointed joint administrators. The new administrators were to file a valuation of all the properties and affidavits on their proposed mode of distribution. This consent was signed by all the beneficiaries together with their respective advocates.
6. When the matter came up for compliance on 5/12/2019, none of the aforesaid directions had been complied with. Instead, **Mutuma** informed the Court that his advocate had withdrawn from acting for him. That it was difficult for him to act as joint administrator with the objector and that instead, his other two sisters **Susan Nkatha and Mercy Naitore Mosoti** should be appointed as administrators.
7. On his part, **Mr. Nyaga, Advocate** for the objector informed the Court that he needed 30 days to file an affidavit on distribution. Both **Susan Nkatha Ithiri and Mercy Naitore Mosoti** who were in Court, expressed their frustration with the two administrators whom they blamed for the delay in the conclusion of this matter.
8. For the foregoing reasons, the Court removed **Mutuma and the objector** as administrators and appointed **Susan Nkatha Ithiri and Mercy Naitore Mosoti** as joint administrators. The Court directed that they file an application for confirmation of grant and any party opposed to their proposed mode of distribution does file and serve his/her protest within 14 days.
9. On 16/1/2020, **Susan Nkatha Ithiri and Mercy Naitore Mosoti**, as joint administrators, filed a summons for confirmation wherein they set out their proposed to distribute all the immoveable properties equally between all the beneficiaries except the property at **Nkuene/Mitunguu/Kithino/335 area**. For that property, they proposed that **Morris Evans Mutuma** does get 50% thereof while the rest be distributed equally among the rest of the 5 beneficiaries equally. They said nothing about the deceased's movable assets.

10. On 13/2/2020, the objector filed an affidavit of protest wherein she agreed with the proposed mode of distribution by the administrators except on **Nkuene/Mitunguu/Kithino/335**. In respect of that property, she stated that the administrators had not given the reason why they proposed that **Mutuma** should take 50% thereof and leave the rest to share the balance equally. In the circumstances, she proposed that the entire estate be distributed equally amongst all the beneficiaries.

11. The Court has considered the record in its entirety. The Court has also considered the respective parties proposed mode of distribution. The following were the agreed beneficiaries of the estate: -

- a) **Mercy Naitore Mosoti**
- b) **Susan Nkatha Ithiri**
- c) **Joy Kanyua Kiambati**
- d) **Morris Evans Mutuma**
- e) **Derrick Mutua Ithiri**
- f) **Kieth Kathurima & Faith Kanana.**

12. Further, the parties were in agreement that the following constitutes the entire estate that is available for distribution. Copies of search certificates or green cards that were filed with the Court: -

- a) **LR. Abuthuguchi/Mariene/1688 (1.225 ha)**
- b) **LR. Abuthuguchi/Mariene/1689 (1.225 ha)**
- c) **LR. Abuthuguchi/Mariene/1671 (1.114 ha)**
- d) **LR. Abuthuguchi/Mariene/1672 (1.336 ha)**
- e) **LR. Abuthuguchi/Mariene/1892 (0.405 ha)**
- f) **LR. Abuthuguchi/Mariene/1893 (0.898 ha)**
- g) **LR. Nkuene/Mitunguu/335 (4.05 ha)**
- h) **Plot at Mariene Market (LR. No. 72/1935)**
- i) **Shares with Nkuriga Traders**
- j) **Shares with Kenya Airways**
- k) **EABL Share No. 60414110**
- l) **Cooperative Bank Ltd Share Cert. No. 042766**
- m) **Mv. Reg. No. KUR 532 (200 Pick Up)**
- n) **Equity Bank Account No. 0140191365736**
- o) **Meru Sacco Ltd A/c No. 1180102**

13. Four of the beneficiaries listed above are children of the deceased. However, three of the beneficiaries are grandchildren born of the deceased who have since passed on. They have been listed to directly benefit from the shares meant to their deceased parents. The beneficiaries are not opposed to this as it will, probably reduce costs and time.

14. *Section 38 of the Law of Succession Act, Cap 160 Laws of Kenya* provides that: -

***“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 shall be equally divided among the surviving children”.***

15. In the present case, the deceased did not leave any spouse or she is already deceased. The provisions of **sections 41 and 42 of the Law of Succession Act** have been shown not to apply. The administrators did not explain why they wished that **LR.**

**Nkuene/Mitunguu/Kithino/335** should be dealt with differently from the rest of the estate.

16. On 3/12/2019, the administrators had sworn a joint affidavit supporting the mode of distribution which had earlier on been suggested by **Mutuma** but which was vehemently opposed by the objector. In paragraph 6 of that affidavit, they stated: -

**“6. THAT in the alternative, we are open and persuaded to have the property distributed equally to all the siblings of the deceased regardless of gender and also will to go by any other decision the court may make in so deciding this matter”.**

17. On its part, this Court has not seen any reason why it should depart from the legal position decreed in **section 38 of the Law of Succession Act**. The estate will be distributed equally among all the beneficiaries of the estate.

18. In this regard, the grant issued to **Susan Nkatha Ithiri and Mercy Naitore Mosoti** on 5/12/2019 is hereby confirmed as follows: -

- a) LR. Abuthuguchi/Mariene/1688 (1.225 ha)
  - b) LR. Abuthuguchi/Mariene/1689 (1.225 ha)
  - c) LR. Abuthuguchi/Mariene/1671 (1.114 ha)
  - d) LR. Abuthuguchi/Mariene/1672 (1.336 ha)
  - e) LR. Abuthuguchi/Mariene/1892 (0.405 ha)
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  - n) Equity Bank Account No. 0140191365736
  - o) Meru Sacco Ltd A/c No. 1180102
- To: a) **Mercy Naitore Mosoti**
- b) **Susan Nkatha Ithiri**
  - c) **Joy Kanyua Kiambati**
  - d) **Morris Evans Mutuma**
  - e) **Derrick Mutua Ithiri**
  - f) **Kieth Kathurima & Faith Kanana - Equally**

19. This being a family matter, I will not make any order as to costs.

**DATED and DELIVERED at Meru this 4<sup>th</sup> day of June, 2020.**

**A. MABEYA**

**JUDGE**