



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MERU
SUCCESSION CAUSE NO. 270 OF 2011

In The Matter Of The Estate Of Peter Meme Mwenda (Deceased)

JOHN MUREA MWENDA.....1ST PETITIONER

SILAS MWITHALI MEME.....2ND PETITIONER

VERSUS

IBRAHIM MWONGELA MEME.....1ST OBJECTOR

MARTHA KAGENDO MEME.....2ND OBJECTOR

-AND-

ISAIAH MUNORU MUCHEKE.....1ST ADMINISTRATOR

JUDGMENT

[1] This Succession Cause relates to the Estate of Peter Meme Mwenda (deceased). On 4th October 2017, the Objectors filled an application seeking to revoke the Grant issued to the Petitioners on 17th July 2012 on the grounds inter alia that the same was issued to persons not entitled to the estate of the deceased. On 11th July 2018, the Grant was subsequently revoked. On 31st July 2018, the court appointed Isaiah Munoru Muccheke, Martha Kagendo Meme and Abraham Mwangela as joint administrators of the estate and further directed the 1st administrator to file and serve Summons for Confirmation of Grant within 14 days with the other two administrators being directed to file their preferred mode within 14 days thereof.

[2] By Summons for Confirmation of Grant dated 22nd October 2018 and filed in court on 26th October 2018, the 1st administrator listed the following as the beneficiaries of the deceased Estate:

- i. William Kanampiu Mwenda (brother)**
- ii. Sam M' Mwenda (brother)**
- iii. John Murega Mwenda (brother)**
- iv. Joseph M' Kailanya Mwenda (brother)**

- iv. Glorly Kawira (Daughter of Lawrence Mugambi-deceased) (brother)
- vi. George Murungi Mwenda (brother)
- vii. Ann Kabutu (wife of Musa M' Mweti Mwenda –deceased) (brother)
- viii. Silas Mwithali M' Mauta (son)
- ix. Ibrahim Mwongela Meme (son)
- x. Martha Kagendo Peter (daughter)
- xi. Patrick Njiru Meme (son)

[3] He further proposed to distribute the estate of the deceased as follows:

L.P NO ITHIMA/NTUNENE/1536

WILLIAM KANAMPIU MWENDA

SAM' MWENDA

JOHN MUREGA

JOSEPH M' KAILANYA MWENDA

GLORLY KAWIRA.....1/5 Equal share

L.P NO. ITHIMA/NTUNENE/1535

GEORGE MURUNGI MWENDA

MUSA M' MWETI MWENDA.1/2 Equal share

L.P NO. ITHIMA/NTUNENE/1537

SILAS MWITHALI M' MAUTA

IBRAHIM MWONGELA MEME

MARTHA KAGENDO PETER

PATRICK NJIRU MEME.....1/4 Equal share

L.P NO. THIMA/ NTUNENE/1543

SILAS MWITHALI M' MAUTA

IBRAHIM MWONGELA MEME

PATRICK NJIRU MEME....1/3 Equal share

L.P NO. ITHIMA/ANTUAMBUI/3629

SSILAS MWITHALI M' MAUTA

IBRAHIM MWONGELA MEME

MARTHA KAGENDO PETER

PATRICK NJIRU MEME.....1/4 Equal share

L.P NO. ITHIMA/ANTUAMBUI 4656

SILAS MWITHALI M' MAUTA

IBRAHIM MWONGELA MEME

MARTHA KAGENDO PETER

PATRICK NJIRU MEME.....1/4 Equal share

L.P NO ITHIMA/ANTUAMBUI3268

SILAS MWITHALI M' MAUTA

IBRAHIM MWONGELA MEME

MARTHA KAGENDO PETER

PATRICK NJIRU MEME.....1/4 Equal share

[4] The other administrators on the other hand namely Martha Kagendo Meme and Abraham Mwongela listed the following as the beneficiaries of the estate;

- 1. MARITHA KAGENDO- DAUGHTER**
- 2. ABRAHAM MWONGELA MEME-SON**
- 3. WILLIAM KIMATHI- SON**
- 4. ZIPPORAH NKORO-MOTHER**
- 5. WILLIAM KANAMPIU MWENDA-BROTHER**
- 6. JOSEPH M' KAILANYA-BROTHER**
- 7. GEORGE MURUNGI MWENDA-BROTHER**
- 8. ANNKABUTU MUSA- SISTER IN-LAW**
- 9. JACINTA KARAMBU MUSA-NIECE**
- 10. GLADYS KATHAMBI MUSA-NEPHEW**
- 11. ROSE KENDI MUSA- NIECE**
- 12. KENNEDY MWITI MUSA-NEPHEW**
- 13. EVAGYLINE KINYA MUSA-NIECE**
- 14. JAMES MUTHURI-NEPHEW**

15. MERCY KAGURI MUSA- NIECE
 16. HARRIET MAKENA MUSA- NIECE
 17. HENRY MWONGELA MUSA-NIECE
 18. JANE NKATHA-NIECE
 19. MARGARET NCHORORO-NIECE
 20. JOHN M' IMWENDA MWENDA-BROTHER
 21. JOHN MUREGA-BROTHER
 22. GLORLY KAWIRAMUGAMBI-NIECE
- PATRICK NJILU MEME-SON- HAS BEEN MISSING SINCE 2014.**

[5] The Administrators further sought to distribute the estate of the deceased as follows;

(i) ITHIMA/NTUNENE/1536

SAM M' MWENDA MWENDA

WILLIAM KANAMPIU MWENDA

JOHN MUREGA MWENDA

JOSEPH M' KAILANYA MWENDA

GLORLY KAWIRA MUGAMBI..Equal shares

(ii) THIMA/ NTUNENE/1535

GEORGE MURUNGI MWENDA

ANN KABURU MUSA.....EQUAL SHARES

(iii) ITHIMA/NTUNENE/1537

MARTHA KAGENDO MEME-0.30 Acres

ABRAHAM MWONGELA MEME-0.30 Acres

WILLIAM KIMATHI-0.30 Acres

PATRICK NJIRU MEME-0.30 Acres

MARTHA KAGENDO MEME

ABRAHAM MWONGELA MEME

WILLIAM KIMATHI....JOINTLY 0.50 Acres

JANE NKATHA-0.30 Acres

(iv) ITHIMA/NTUNENE/3629

MARGARET NCHORORO-WHOLE

(v) ITHIMA/NTUNENE/4656

MARTHA KAGENDO MEME

ABRAHAM MWONGELA MEME

WILLIAM KIMATHI

PATRICK NJIRU MEME.....Equal shares

(vi) ITHIMA/ANTUAMBUI/3268

MARTHA KAGENDO MEME

ABRAHAM MWONGELA MEME

WILLIAM KIMATHI

PATRICK NJIRU MEME.....Equal shares

(vii) ITHIMA/NTUNENE/1543

MARTHA KAGENDO MEME

ABRAHAM MWONGELA MEME

WILLIAM KIMATHI

PATRICK NJIRU MEME.....Equal shares

[6] The 1st administrator in objecting to the Summons for Confirmation of Grant dated 26th October 2018 filed by other administrators, deposed inter alia (1) that William Kimathi, Jane Nkatha and Margaret Ncororo were strangers who had been introduced to replace the 2nd Petitioner (Silas Mwithali) as a beneficiary of the estate; (2) that he had distributed the estate in accordance with the law and in consultation with beneficiaries; (3) and that on two occasions some of them had been told by Peter Kirimi Mbogo not to cooperate with him.

[7] The other administrators Martha Kagendo and Abraham Mwongela in a detailed affidavit sought to explain why they had distributed the estate in the suggested manner and contended inter alia that in making their proposal for distribution, they had taken into consideration inter alia interests of the siblings and deliberations and decisions of the family and clan in a meeting held on 25th October 2018 at Mithiaru Academy Compound.

ANALYSIS AND DETERMINATION

[8] There has been twists and turns in these proceeding, accusations upon accusations and visible conflict between the two camps in this matter. But that is water under the bridge. I have carefully considered the respective lists on dependants as well as modes of distribution by the parties. Notably, the 1st administrator Isaiah Munoru Mucheke is not a relative of the deceased whilst the other administrators Ibrahim Mwongela Meme and Martha Kagendo Meme are son and daughter of the deceased respectively. The two administrators who are children of the deceased seem to understand the estate and dependants of

the deceased. That notwithstanding, the contention by the 1st administrator that William Kimathi, Jane Nkatha and Margaret Ncororo were strangers merely introduced to replace the 2nd petitioner as a beneficiary of the deceased's estate is hollow and is not supported by any evidence or decipherable details. Similarly, his allegations that one Peter Kirimi Mbogo had told some beneficiaries not to cooperate with him were baseless and unsubstantiated. The 1st administrator seems to be beholden to Silas instead of discharging his statutory obligations as an administrator. It is also not lost on this court that on 20th February 2013, a report filed by the DCIO Maua showed that Silas Mwithali Meme's father was Aloise M' Mauta and his mother was said to be Kathini Kaanjo. The report further concluded the name Peter Meeme Mwenda (the deceased herein) did not feature anywhere as far as registration of Silas Mwithali M' Mauta was concerned. The contents of that report remain unconverted to date. This issue was specifically dealt with in the ruling of 11th July 2018 as follows:

The major quarrel here is that the Grant was issued to persons not entitled to the estate of the deceased; they were strangers and that the Petitioners had fraudulently distributed the estate of the deceased to strangers. The Objectors denied having ever been in court during the confirmation of the Grant herein. No doubt that the 1st Petitioner was a brother to the deceased. It is also not in dispute that the Objectors were children of the deceased. The only major source of bitter objection is the claim by the 2nd Petitioner Silas Mwithali Meme, that he was the 1st biological son of the deceased. As was observed by the court vide its ruling dated 4th October 2017, the Objectors' allegations that the 2nd petitioner was a stranger to the estate prompted the court to refer the matter to the Criminal Investigations Department for investigations and a report filed by the D.C.I.O Maua, show the 2nd Petitioner's father to be Aloise M' Mauta and his mother was Kathini Kaanjo. The 2nd Petitioner has not expressly denied the contents of the D.C.I.O report or provided any evidence to rebut the report save alleging that there was no application for DNA.

[9] As alluded to earlier, the 1st administrator is not a relative of the deceased whereas the other administrators Abraham Mwongera and Martha Kagendo are son and daughter respectively of the deceased. All of the beneficiaries of the deceased are in agreement to the proposed mode of distribution by Martha Kagendo Meeme since none has filed a protest or otherwise to oppose the same. The 1st administrator as well as Silas Mwithali did not provide any proof that Silas is a son or a dependant of the deceased. The evidence available portrays Silas as an imposter and a stranger to the estate. He is not a dependant of the deceased. The evidence by the other parties herein is clear who the dependants of the deceased are. The mode of distribution by the 1st Administrator has not been sufficiently explained given the finding above about Silas. Upon careful consideration, I find the proposed mode of distribution by Martha Kagendo Meeme to be fair, just and reasonable and in accordance with the law. She took time to give detailed affidavit on the reasons why she is proposing to distribute the estate in the particular manner. Accordingly the grant is confirmed and the estate of the deceased shall be distributed in accordance with paragraph 5 of the affidavit in support of Summons for Confirmation of Grant dated 26th October 201s as follows

(i) **ITHIMA/NTUNENE/1536**

Sam M' Mwenda Mwenda

William Kanampiu Mwenda

John Murega Mwenda

Joseph M' Kailanya Mwenda

Glorly Kawira Mugambi....Equal shares

(ii) **THIMA/ NTUNENE/1535**

George Murungi Mwenda

Ann Kaburu Musa.....Equal shares

(iii) ITHIMA/NTUNENE/1537

Martha Kagendo Meme-0.30 Acres

Abraham Mwangela Meme-0.30 Acres

William Kimathi-0.30 Acres

Patrick Njiru Meme-0.30 Acres

Martha Kagendo Meme

Abraham Mwangela Meme

William Kimathi.....Jointly 0.50 Acres

Jane Nkatha-0.30 Acres

(iv) ITHIMA/NTUNENE/3629

MARGARET NCHORORO-WHOLE

(v) ITHIMA/NTUNENE/4656

Martha Kagendo Meme

Abraham Mwangela Meme

William Kimathi

Patrick Njiru Meme.....Equal Shares

(Vi) Ithima/Antuambui/3268

Martha Kagendo Meme

Abraham Mwangela Meme

William Kimathi

Patrick Njiru Meme.....Equal shares

(vii) ITHIMA/NTUNENE/1543

Martha Kagendo Meme

Abraham Mwangela Meme

William Kimathi

Patrick Njiru Meme.....Equal shares

[10] This being a succession matter, there will be no order as to costs.

Dated Signed and delivered in open court at Meru this 13th day of February, 2019.

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F. GIKONYO

JUDGE

In presence of

All parties present

All administrators present

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F. GIKONYO

JUDGE