



**REPUBLIC OF KENYA**

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

**SUCCESSION CAUSE NO. 14 OF 2012**

**IN THE MATTER OF THE ESTATE OF GATIMU SAMSON MBUI ALIAS SAMSON MBUI – DECEASED**

(Formerly Succ Cause No. 35 of 2006 Kerugoya Senior Principal Magistrate's Court)

**ERIC SAMSON MBUI GATIMU .....1<sup>ST</sup> PETITIONER**

**JEREMIAH MUCHIRI GATIMU ..... 2<sup>ND</sup> PETITIONER**

**V E R S U S**

**SAMSON MBUI GATIMU .....PROTESTOR**

**JUDGMENT**

1. This matter relates to the Estate of Gatimu Samson Mbui alias Samson Mbui.

2. Grant of Letters of Administration of Gatimu Samson alias Gatimu Samson Mbui deceased was granted to Esther Muthoni Gatimu on 09/06/2006. She proceeded to file an application for Confirmation of Grant dated 30/01/2007 and stated that the deceased was survived by the following dependants;

**a. Esther Muthoni Gatimu – widow**

**b. Samuel Muriuki Gatimu**

**c. Erick Samon Mbui**

**d. Samson Mbui Gatimu**

**e. Grace Kabuci Gatimu**

**f. Jeremiah Muchiri Gatimu**

**g. James Gitari Gatimu**

**h. Jamlick Njagi Gatimu**

**i. Janet Wagachigi Gatimu**

3. She proposed that the deceased's estates be determined as follows;

(a). Kabare/Mutige/242

**Samuel Muriuki Gatimu – 0.9 acres**

**Erick Samon Mbui– 0.9 acres**

**Samson Mbui Gatimu – 0.9 acres**

**Jeremiah Muchiri Gatimu – 0.9 acres**

**James Gitari Gatimu – 0.9 acres**

**Jamlick Njagi Gatimu – 0.9 acres**

**Esther Muthoni Gatimu**

**Grace Kabuci Muthike 0.9 Acres Jointly**

**Janet Wagacigi Gatimu**

**(b) Mukarara Plot No. 10**

Esther Muthoni Gatimu – whole share

**(c) Kutus Plot No. 49 A**

Esther Muthoni Gatimu – whole share

**(d) Kutus Plot No. 38**

Esther Muthoni Gatimu – whole share

**(e) Gatugura Village Plot No. 75**

Esther Muthoni Gatimu – whole share

**(f) KDCU Kerugoya account No. 0409-02-115**

Esther Muthoni Gatimu

**(g) Mau-Mau Trust Account**

Esther Muthoni Gatimu

4. She proceeded to file another application for confirmation of grant on 10/03/2011 and proposed that the deceased's estates be determined as follows;

**(i) Kabare/Mutige/242**

Samuel Muriuki Gatimu – 0.9 acres

Erick Samon Mbui – 0.9 acres

Samson Mbui Gatimu – 0.9 acres

Jeremiah Muchiri Gatimu – 0.9 acres

James Gitari Gatimu – 0.9 acres

Jamlick Njagi Gatimu – 0.9 acres

Esther Muthoni Gatimu – 0.9 acres

**ii. Mukarara Plot No. 10**

Esther Muthoni Gatimu – whole share

**iii. Kutus Plot No. 38**

Esther Muthoni Gatimu – whole share

Protest was filed by Mbui Gatimu vide affidavit sworn on 28/3/2011.

**Protestor's Case**

5. Samson Mbui Gatimu proceeded to file an affidavit in protest on 28/03/2011 and stated that the petitioner left out some beneficiaries and some of the estate of the deceased. He proposed the estate should be distributed as follows;

**a. Kabare/Mutige/242**

Samuel Muriuki Gatimu – 0.9 acres  
Erick Samon Mbui – 0.9 acres  
Samson Mbui Gatimu – 0.9 acres  
Jeremiah Muchiri Gatimu – 0.9 acres  
James Gitari Gatimu – 0.9 acres  
Jamlick Njagi Gatimu – 0.9 acres  
Esther Muthoni Gatimu }  
Grace Kabuci Gatimu } – 0.9 acres jointly  
Janet Wagachigi Gatimu }

**(b) Mukarara Plot No. 10**

Jamleck Njagi Gatimu  
James Gitari Gatimu – jointly in equal shares  
Eric Samson Mbui Gatimu

**(c) Kutus Plot No. 49A**

Samson Mbui Gatimu }  
Janet Wagachigi Gatimu } – jointly in equal shares  
Grace Kabuci Gatimu }

**d. Kutus Plot No. 38**

Samuel Muriuki Gatimu }  
Esther Muthoni Gatimu } – jointly in equal shares  
Jeremiah Muchiri Gatimu }

6. The Court in its ruling dated 25/01/2013 stated that the administrator has not been able to identify the assets which make up the estate, therefore the proposal to distribute the estate was premature. That the administrator must first identify the assets and collect them and obtain documentary proof of ownership before proposing distribution.

7. The petitioner proceeded to file an affidavit for confirmation of grant wherein she identified the estates of the deceased and proposed distribution as follows;

**1. Kabare/Mutige/242**

Samuel Muriuki Gatimu – 0.9 acres

Erick Samon Mbui – 0.9 acres

Samson Mbui Gatimu – 0.9 acres

Jeremiah Muchiri Gatimu – 0.9 acres

James Gitari Gatimu – 0.9 acres

Jamlick Njagi Gatimu – 0.9 acres

Esther Muthoni Gatimu

Grace Kabuci Gatimu – 0.9 acres jointly

Janet Wagachigi Gatimu

**2. Mukarara Plot No. 10**

Esther Muthoni Gatimu – whole share

**3. Kutus Plot No. 38**

Esther Muthoni Gatimu – whole share

8. The protestor also filed an affidavit of protest on 17/06/2015 whereby he was agreeable to the mode of distribution proposed save for **Kutus Plot No. 49A** which she had not included. He annexed documentation to prove that the same belonged to the deceased. He proposed that the said Plot be given to him solely since the other beneficiaries are not interested.

9. A consent was filed on 08/03/2016 by the all the other beneficiaries except the protestor whereby they consented to the mode of distribution proposed by the petitioner. In addition, **Kutus Plot No. 49A** be given to the petitioner in whole share.

10. Unfortunately the administrator passed away and was substituted by Eric Samson Mbui Gatimu and Jeremiah Muchiri Gatimu. They proposed distribution of the estate as hereunder;

**1. Kabare/Mutige/242**

Samuel Muriuki Gatimu – 0.9 acres

Erick Samon Mbui – 0.9 acres

Samson Mbui Gatimu – 0.9 acres

Jeremiah Muchiri Gatimu – 0.9 acres

James Gitari Gatimu – 0.9 acres

Jamlick Njagi Gatimu – 0.9 acres

Grace Kabuci Gatimu – 0.9 acres jointly

Janet Wagachigi Gatimu

**2. Mukarara Plot No. 10 – Equal Shares**

Samuel Muriuki Gatimu

Erick Samon Mbui

Samson Mbui Gatimu

Jeremiah Muchiri Gatimu

James Gitari Gatimu

Jamlick Njagi Gatimu

Grace Kabuci Gatimu

Janet Wagachigi Gatimu

**3. Kutus Plot No. 49A– Equal Shares**

Samuel Muriuki Gatimu

Erick Samon Mbui

Samson Mbui Gatimu

Jeremiah Muchiri Gatimu

James Gitari Gatimu

Jamlick Njagi Gatimu

Grace Kabuci Gatimu

Janet Wagachigi Gatimu

**4. Kutus Plot No. 38– Equal Shares**

Samuel Muriuki Gatimu

Erick Samon Mbui

Samson Mbui Gatimu

Jeremiah Muchiri Gatimu

James Gitari Gatimu

Jamlick Njagi Gatimu

Grace Kabuci Gatimu

Janet Wagachigi Gatimu

11. During hearing the protestor confirmed he was agreeable to the distribution of **Kabare/Mutige/242**. However since the petitioners had indicated they are not interested in **Kutus Plot No. 49A** the same should be given to him and thereafter he will have no interest in **Mukarara Plot No. 10** and **Kutus Plot No. 38**.

The issue which arises for determination is distribution of the estate.

12. Since all the beneficiaries and list of properties have been confirmed, it will be fair for the same to be distributed equally to all of them as proposed by the petitioners. The proposal that the protestor gets whole share of Kutus Plot No. 49A is not justifiable. **Section 38 of the Law of Succession Act Cap 160 Laws of Kenya** provides:- The provision provides for the distribution of the net estate to all the children equally. This requires that each child gets an equal share.

13. The protestor states that he should get plot No. 49A Kutus as his brothers had said they don't know it and that it is in court. He admits that the plot is developed with a building which was built by his late father. The plot No. 49A Kutus belongs to the estate of the deceased and is available for distribution to the beneficiaries in equal share. I find that there is no justification by the protestor that the plot be given to him exclusively. The proposal by the protestor is contrary to the spirit of **Section 38 of the Law of Succession Act**. I see no reason why the protestor should get the plot exclusively. The plot should be shared equally by all the beneficiaries. The upshot is that the protest is without merits. I dismiss it. I order that the estate be distributed as proposed by the petitioner.

**14. In conclusion:-**

1. The protest by Samson Mbui Gatimu is without merits and is dismissed.
2. The grant issued on 9/6/06 is confirmed.

3. The estate of the deceased comprised in:-

(a) - Kabare/Mutige/242

(b) Mukarara Plot No. 10

(c) Kutus Plot No 49A

(d) Kutus Plot No. 38.

Be shared equally among the beneficiaries save for Plot No. 242 where Grace Kabuci Gatimu and Janet Wagachigi Gatimu shall get 0.9 acres jointly.

15. No orders as to costs.

**Dated at Kerugoya this 7<sup>th</sup> day of February 2019.**

**L. W. GITARI**

**JUDGE**