



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KERUGOYA

SUCCESSION CAUSE NO.310 OF 2012

IN THE MATTER OF THE ESTATE OF KIURA KINYUA (DCD)

CHARLES WAWERU KIURA APPLICANT

V E R S U S

MARY WANGIGE NYAGA.....1ST RESPONDENT

BENSON MUCHIRI KARIA.....2ND RESPONDENT

JAMES NJERU.....3RD RESPONDENT

VIRGINIAS KABACI.....4TH RESPONDENT

MICHAEL MUTHIKE MURIITHI.....5TH RESPONDENT

BENSON MWANGI MURIITHI.....6TH RESPONDENT

NJAGI NDATHI.....7TH RESPONDENT

FELIX NYAGA.....8TH RESPONDENT

GACHOKI MURIUKI KIRIL.....9TH RESPONDENT

GITARI MURIITHI.....10TH RESPONDENT

JUDGMENT

1. This cause relates to the estate of the deceased Kiura Kinyua (Deceased) who died Intestate on 1/12/2011.

Grant of letters of administration of Kiura Kinyua deceased was granted to Mary Wangige Nyaga and Charles Waweru Kiura on 20/06/2012. Mary Wangige proceeded to file an application for confirmation of grant dated 21/12/2012 and stated that the deceased was survived by the following dependants;

- a) Mary Wangige Nyaga – widow
- b) Charles Waweru Kiura - son
- c) Lucy Wanja – daughter
- d) Florence Ruguru Kiura – daughter
- e) Mary Wawira Kiura – daughter

2. She proposed that the deceased's estates be distributed as follows;

1. Lucy Wanja – Ngariama/Thirikwa/3025

2. Mary Wangige Nyaga–Ngariama/Thirikwa/3026 Equal share

3. Charles Waweru Kiura-

3. However being dissatisfied with the proposed mode of distribution a protest was filed by Charles Waweru vide affidavit sworn on 12/3/13.

4. Protestor's case

Charles Waweru Kiura proceeded to file an affidavit in protest on 12/03/2013 and stated that the deceased was the registered owner of **Ngariama/Thirikwa/274** which was later subdivided before his death into **Ngariama/Thirikwa/3021 – 3028**. That the resultant parcels were distributed as follows;

a) **Ngariama/Thirikwa/3021, ½ acre** – Mary Wangigi

b) **Ngariama/Thirikwa/3022, ½ acre** – Patrick Njeru Muriuki (purchaser)

c) **Ngariama/Thirikwa/3023, 1 are** – Mary Wawira

d) **Ngariama/Thirikwa/3024, 1 acre** – Florence Ruguru

e) **Ngariama/Thirikwa/3025, 1 acre** - Lucy Wanja (still registered under deceased's names)

f) **Ngariama/Thirikwa/3026, 3 ½ acres** – Kiura Kinyua

g) **Ngariama/Thirikwa/3027, 1 acres** – Linus Mureithi Migwi (purchaser)

h) **Ngariama/Thirikwa/3028, 2 acres** - Charles Waweru Kiura.

5. That the deceased had two wives and the other was Sabastiano Wanjiku who was their mother while the petitioner had no children with the deceased. That he was dissatisfied with his 2 acres and filed **Gichugu Case No. 36 of 2010** seeking additional portion from the deceased and they entered into a consent whereby the deceased gave him 1 acre from **Ngariama/Thirikwa/3026**. Therefore after removal of his 1 acre, the remaining 2 ½ acres should be distributed between the beneficiaries in equal shares as follows;

a) **Mary Wangige Nyaga – ½ acres**

b) **Charles Waweru Kiura – 1 ½ acres**

c) **Lucy Wanja – ½ acres**

d) **Florence Ruguru Kiura – ½ acres**

e) **Mary Wawira Kiura – ½ acres**

6. The issue for determination is the distribution of the two parcel No. Ngariama/Thirikwa/3025 & 3026.

It was not in dispute that the deceased left behind one surviving widow, one son and three daughters. In addition, **Ngariama/Thirikwa/3025** had been given to Lucy Wanja but it was still registered under the deceased's names. It was also not in dispute that the deceased had already distributed his land to his dependants except for **Ngariama/Thirikwa/3026**. The protestor has adduced evidence of the consent recorded in court vide **Gichugu Case No. 36 of 2010** whereby the deceased had agreed to give him 1 acre out of the said land therefore the balance is 2 ½ acres which is remaining for distribution.

7. The property which is in dispute is Ngariama/Thirikwa/3026. The proceedings at Gichugu court show that the deceased and the protestor entered a consent on 25/8/10 where the deceased added an acre to the protestor so that he gets three acres. Since the protestor has proved that land parcel No. Ngariama/Thirikwa/3026 was in the name of the deceased at the time of his death it is property forming the estate of the deceased and available for distribution to the rightful beneficiaries. The protest has merits. The protestor has proved that he was given one acre. The parcel of land measures 3 ½ acres. The protestor is entitled to get one acre which he was given by the deceased. The balance of 2 ½ acres should therefore be distributed. The other beneficiaries have not opposed the mode of distribution.

8. I find that it would be fair and just that the remaining 2 ½ acres be shared equally by all the beneficiaries. That is to say land Parcel No. Ngariama/Thirikwa/3026 be distributed as follows:-

1. **Charles Waweru Kiura - 1 ½ Acres.**

2. **Mary Wangige Nyaga - ½ Acre.**

3. Lucy Wanja - ½ Acre.

4. Florence Ruguru Kiura - ½ Acre.

5. Mary Wawira Kiura - ½ Acre.

9. With regard to Ngariama.Thirikwa/3025 measuring one acre, the parties agreed that it was given to Lucy Wanja though it is in the name of the deceased. Lucy Wanja is therefore entitled to get the whole share of Ngariama/Thirikwa/3025.

The grant shall be confirmed and the estate be distributed as stated at paragraph 8 above.

I make no orders as to costs, each party to bear its own costs.

Dated at Kerugoya this 7th day of February 2019.

L. W. GITARI

JUDGE