



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

SUCCESSION CAUSE NO. 462 OF 2009

In The Matter Of The Estate Of Raiji Raiji (Deceased)

M'INOTI M'RAIJIPETITIONER

Versus

JOHN MBAABU MUGWIKA..... 1ST ADMINISTRATOR

ESTHER MWENGWA 2ND ADMINISTRATOR

JUDGMENT

[1] **Raiji Raiji ('the deceased')** to whom this Succession Cause relates died in the 1950s. The Chief's letter of introduction dated 10th September 2009 it stated that the deceased was survived by :

- 1. Karoki M'Raiji - Widow (deceased)**
- 2. Kithira Raiji - Daughter (deceased)**
- 3. Mukonciru Raiji - Daughter**
- 4. Minoti M'Raiji - Son**
- 5. John Mbaabu Mugwika (has interest)**

[2] In the petition, Minoti M'Raiji, the petitioner, stated that the assets of the deceased are:

- 1. NYAKI/MUNITHU/208 and**
- 2. NYAKI/CHUGU/301.**

[3] A grant of letters of administration intestate was made to him on 8th April 2010. On 17th February 2011, Esther Mwangwa and John Mbaabu Mugwika were appointed as co – administrators of the estate.

[4] On 25th July 2012 Minoti M'Raiji applied for confirmation of the grant through a Summons for Confirmation of Grant and stated that **Nyaki/Chugu/301** is a liability to John Mbaabu Mugwika. His application was supported by John Mbaabu Mugwika through his supporting affidavit dated 25th July 2012. John deposed that the estate be distributed as follows:

- a) Nyaki/Chugu/301- Minoti M'Raiji (wholly)**
- b) Nyaki/Munithu/208 - John Mbaabu Mugwika (wholly)**

[5] But Esther Mwangwa was of a different opinion. She averred in the replying affidavit sworn by her on 23rd January 2017:-

1. That John Mbaabu is neither a beneficiary nor a purchaser of the deceased's estate.
2. That since M'inoti Raiji is deceased, and being her father, she is now entitled to distribute the deceased's estate as per his wishes.

3. That the 1st administrator duped the petitioner only to appear in this cause and obtain the land fraudulently without their consent. His intentions are cunning since he has not even demonstrated how he became a purchaser as he purports.

4. That, the estate should be distributed as follows:

L.R NYAKI/MUNITHU/208 to be shared equally amongst:-

- a) Joyce Ntinyari
- b) Lucy Mataria
- c) Esther Mwengwa

L.R NYAKI/CHUGU/301

- i. Esther Mwengwa - { holding
- ii. Joyce Ntinyari in trust of Stanley Mwirigi}
- iii. Lucy Mataria

5. By a ruling on 9th October 2017 the grant was rectified and the name of the deceased administrator that is M'noti M'Raiji was deleted. On the issue of confirmation, the parties filed their statements and submissions to support their case.

6. The 1st administrator in his statement and submissions dated 12th October and 7th December 2018 respectively averred that he is the son of one Mugwika Mutiga who during land adjudication process and the deceased agreed to exchange two parcels of land. His father agreed to surrender his land in Chugu (0.60HA) in exchange for Raiji's land in Munithu; the deceased surrendered the land to his father. His father gave him possession of it of which he has extensively developed. He stated that, it was agreed by the family of the deceased herein that they would file a succession cause in respect of the estate to enable him to get the title deed. But the petitioner changed his mind owing to the influence of the 2nd administrator.

7. The 2nd administrator in her statement and submissions ascertained that the petitioner was the only son of the deceased. He was given land by the deceased where he set up his home and raised his family. He had the following children: **Esther Mwengwa, Catherine Mwari** (deceased), **George Manyara** (deceased), **Joyce Ntinyari, Lucy Mataria, Stanley Mwirigi** and **Kiunga**. Most of the time the petitioner used to live in Mombasa and Tanzania and when he finally came to settle down in 1979 is the time they realized that someone had settled on the deceased's land.

8. She denied the land was sold to the objector or that there was an exchange. Moreover, even if there was such an arrangement the objector is not the legal representative of the estate of Mugwika Mutiga. She stated that that the adjudication process lasted from 1964 to around 1970 when titles were issued. The deceased was issued with title in 1970, this cause was filed in 2009 but the objector has not made any effort to correct the situation. Therefore to her the objector's claim are mere statements without proof and the records attached to the statement only personnel from the department of lands of which none was called.

ANALYSIS AND DETERMINATION

9. The application before me is for confirmation of grant. Therefore I should ascertain the estate property, rightful beneficiaries of the estate, their respective shares and distribute the estate accordingly and confirm the grant. These constitute the issues for determination.

10. Concerning the assets of the deceased, it is asserted that they are **L. R Nyaki/Munithu/208** and **L.R Nyaki/Chugu/301**. The 1st administrator alleges that his father and the deceased exchanged parcels of land and **Nyaki/Munithu/208** belongs to him.

11. It is trite law that whoever alleges must prove. The 1st administrator produced an adjudication record to ascertain his allegation. The record is incomprehensible and does not explain or tend to shed light to his claim. Also, the certificate of confirmation of grant for Succession Cause No. 681 of 2013 that relates to the estate M'Mugwika M'Mutiga shows that a person other than the 1st administrator is the one with authority over his father's estate. This is important because enforcement of claims on behalf of the deceased is by the holder of grant of representation. See **Section 82 of the Law of Succession Act**. In this case, the 1st administrator states that the exchange of land parcels occurred between the deceased and his father. What's more, he affirmed that he is in occupation and has extensively developed but this has not been proved. The legitimacy of the transfer or how the adjudication process happened as well as the alleged exchange are not matters for this court to determine; ELC is the correct forum thereto.

12. And upon consideration of the evidence adduced, I reach the conclusion that the 1st administrator has failed to prove bona fide claim of ownership exists which may bring conviction upon the court not to distribute the land in question and to set it aside for determination by ELC. Accordingly, I am of the considered opinion that the assets of the deceased's estate are: **L. R Nyaki/Chugu/301** and **L. R Nyaki/Munithu/208**. As corollary order, I remove the 1st administrator from being such administrator.

13. With regard to the beneficiaries of the estate; the deceased was survived by his wife and three children. However at this time they are all deceased. At the time of filing this cause the deceased was survived by only two children, the petitioner and Mukonciru Raiji (daughter) who

according to the chief's letter is that she was married and over 70 year. She consented to the making of the grant of administration through Form 38 which she signed and the petitioner sought to have the estate distributed to him.

14. The petitioner according to his daughter the 2nd administrator has seven children two of whom are deceased. But the 2nd administrator's mode of distribution tends to distribute the estate only amongst four children. This would be to the detriment of the other children for they are all equally entitled to a share. Where it is not clear on the particular beneficiaries of the deceased beneficiary's estate, the said share belonging to their parent should go to the estate of their late father to be shared equally amongst all his children or beneficiaries. Identification of the beneficiaries thereto should be done in a separate cause relating to the estate of M'inoti M'Raiji for there might be other beneficiaries this court may not be aware of. It would suffice to order that the estate of late Raiji Raiji shall devolve to the children of M'inoti Raiji in equal shares.

15. Consequently, I am of the considered opinion that the following orders are apt:

a) That the grant herein is confirmed and the estate comprising of Nyaki/Chugu/301 and Nyaki/Munithu/208 shall devolve to all the children of late M'inoti M'Raiji in equal shares.

Dated, signed and delivered in open court at Meru this 6th day of February, 2019.

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F. GIKONYO

JUDGE

In presence of

Gatari for objector

Kariuki for Mokuia for petitioner

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F. GIKONYO

JUDGE