



In re Estate of Samson Iringo Nkubitu alias M'iringo M'nkubitu (Deceased) (Succession Cause 378 of 2007) [2019] KEHC 10889 (KLR) (6 February 2019) (Judgment)

In re Estate of Samson Iringo Nkubitu (Deceased) [2019] eKLR

Neutral citation: [2019] KEHC 10889 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
SUCCESSION CAUSE 378 OF 2007**

F GIKONYO, J

FEBRUARY 6, 2019

**IN THE MATTER OF THE ESTATE OF SAMSON IRINGO
NKUBITU ALIAS M'IRINGO M'NKUBITU (DECEASED)**

BETWEEN

ISAAC MUTHOIRA M'ERINGO PETITIONER

AND

PRIGINA NTEIGA M'IRINGO OBJECTOR

JUDGMENT

[1] Samson Iringo Nkubitu ('the deceased') to whom this succession cause relates died on 13th February, 1992. Through the chief's letter of introduction dated 20th August 2007 it was stated that the deceased was survived by:

1. Mukomuga Samson - Wife
2. Isaac Muthiora M'Eringo - Son
3. Geoffrey Mwiti Iringo - Son
4. Solomon Kathurima Iringo - Son
5. Timothy Mwirigi Iringo - Son
6. Ayub Kaai Iringo - Son
7. Grace Karimi Iringo - Daughter (not married)
8. Gideon Gitonga Aritho



9. Rosemary Gitonga Aritho Purchasers of land No. Nyaki/Mulathankari/764

And his assets include land parcel Nyaki/Murathankari/764, Nyaki/Giaki/600 and Plot No. 4A Banana.

- [2] The petitioner petitioned for letters of administration and grant of letters of administration intestate were issued to him on 16th May 2008. An objection was raised by the objector on the grounds that she is the younger wife of the deceased with their three children. She argued that the petitioner filed the petition secretly without informing her considering she is a rightful beneficiary with first priority ranking against the petitioner.
- [3] The objection was opposed vide the replying affidavit of Isaac Muthiora M'eringo and supporting replying affidavit of Jerinder Mukomuga Samson both sworn on 9th May 2008. It is contended that the objector is a stranger to the cause and the entire family for she has never been seen at their home, in any land or in any known place with the deceased and has never been in any business outside their home. Neither was she at the funeral nor recognized as she was not on the list of the members of the family. They avowed that the deceased never had any relationship with the deceased. That the objector was approached by M'Rukunga M'Nkubitu who used to cultivate free of charge on land parcel No. Nyaki/Mulathankari/764 which he was given by the deceased. The family moved to No. Nyaki/Giaki/600 because they could not manage both lands and now that the family decided to sell the former land M'Ruunga advised the objector to claim the land from the estate of the deceased.
- [4] The matter was heard through viva voce evidence. DW1 Joseph M'Rukungu M'Nkubitu younger brother to the deceased told the court that the deceased had two wives Njerida Mukamuga and Prigina Nteiga. With Njerida he had six children and Prigina four. Prigina was settled at the house where the 1st wife was and 1st wife shifted to lower part at Kibuirini and coffee trees were given to the 2nd wife.
- [5] Following the death of the deceased, Isaac went and demolished the main house and kitchen of the 2nd wife and took the iron sheet to construct a house for livestock. The 2nd wife was left homeless but he does not know where she lives. At Kachuna market, which has another name of Banana market, he took half, the 1st wife took the second half and the 2nd wife the other half. That the objector is the wife of his brother and is entitled to the estate. He stated that the deceased said that the land in Kiburini which is 21 acres should go to the 1st wife and her children, 2nd wife to stay at Mulathankira which is about 4 acres out of which he is entitled to a portion of 1.10 acres and which the deceased had accepted and even agreed in writing. The Kachuna plot was to be shared equally among the two widows. He avowed that he did not prompt the 2nd wife to file the consent because he was denied money.
- [6] DW2 Prigina Nteiga M'eringo affirmed that she married the deceased through Meru Customary Law. She was taken to Banana Market where she stayed till she got her first child then the deceased removed her to Mulathankari. When her first born went to Giaki for school her co-wife told her to go there to take care of him. While there she was cultivating the deceased's land and the land she left at Mulathankari she continued picking coffee. She took it to Gakane factory but cannot recall the coffee number. She left Giaki for Mulathankari but after her house at Mulathankari was demolished she went to live with her brother but her children stay at Giaki. She stayed at Banana Market for 10 years and then at Mulathankari for 40 years. The deceased died in 1992 but she did not take action because she knew the land belonged to her.
- [7] DW3 Laban M'Rukaria stated that he knew the deceased and his family as he was his neighbor at Mulathankari. That the deceased had two wives but he cannot remember their names. That the names of the children are Nkirote, Kananu and Kiburio but he cannot recall the name of the one that died. He knows dowry was paid as he was called by DW1 to see from where the deceased was marrying from.



The deceased before his death told him his 2nd wife and her children should not go to the 1st wife's home but at Mulathankari land and told DW1 to take care of his family.

- [8] At the close of the objector's case, the petitioner called two witnesses. PW1 Fidel Muthiora son of the deceased stated that the deceased did not have another wife. He only came to know about the objector when they sold Nyaki/Mulathankari/764. He was cultivating as he had planted coffee of which his mother had the society number and trees but there is no home. They sold the Mulathankari land in 2007 with Joseph Rukunga as per the agreement dated 3rd August 2007. The witnesses are Joseph Kithinji Kiamberi (brother to the deceased), Joseph M'Rukunja and Johan Muriithi. He does not know the daughters of Nteiga and has never seen anyone sleep in the rear rooms of the shop. At Mulathankari there is no house. They sold the land in spite of them not having the letters of administration and did not have the court authority to sell it.
- [9] PW2 Gideon Gitonga Aritho a registered valuer based at Nairobi testified that he knows PW1 as the deceased was his neighbor. He avowed that he does not know the objector. That he bought land Nyaki/Mulathankari/764 covering 1.6HA. He did not see the objector on the land neither is he aware that she was married to the deceased and he did not have a home in Mulathankari when he bought the land. M'Rukungu, brother to the deceased was the one that introduced him to the shamba. He did not tell him whether the land belonged to someone else since all the family members were involved. He was sold to the land by Joseph Muthiora the petitioner. It did not belong to him but was given authority to do so by the mother but she did not witness the agreement. The seller did not have power to sell.

Analysis and Determination

Issues

- [10] I should determine the objection and establish whether she is a wife of the deceased.
- [11] The objector claimed that she is the second wife of the deceased. And that the petition was filed secretly and without her knowledge despite being a person with priority.
- [12]. Section 66 of the *Law of Succession Act* gives preference to certain persons to administer the estate of the deceased and the surviving spouse is at the top of the list. There is good reason for that as a spouse is ordinarily best placed to administer the estate of the deceased spouse. The petitioner denied that the objector is a wife of the deceased or that her children were fathered by the deceased. The objector called witnesses who supported her claim. The letter of the chief of Mulathankari location dated 13th September 2007 stated that the deceased had a second family which was not included in the list of dependants.
- [13]. The objector testified that when she got married she lived in Banana market but after she sired her first born she moved to Mulathankari. But according to the neighbor DW3 when the objector got married she moved to the Mulathankari land but they had no children. Secondly, the objector told the court that when her son went to study in Giaki she moved there to take care of him and later moved back to Mulathankari after the burial of the deceased. The question that comes is: How did she live on the Mulathankari land for 40 years as claimed if she was at Giaki. Thirdly, the objector stated that she was the one harvesting coffee and selling to the co-operative society but could not remember the number. The evidence by the petitioner, PW1 especially exhibit P1= the society's pass book- shows that the members were the deceased and Jerinder Mukomugo Samson. Fourthly, when the deceased died in 1992 the objector claims that her house was destroyed and was chased away and went to live with her brother. Since 1992 up to 2007 when this cause was filed there is a difference of 15 years. Another question: If the land belonged to her as she alleges then why did she abandon it for that long



to live with other people. The evidence presented before this court by the Objector is characterized by substantial contradictions. Furthermore, the objector has not presented this court with any birth certificate or immunization cards or some form of evidence to show that her children are children of the deceased. No evidence was adduced to show that she was the second wife of the deceased. Only generalized statements were made that she was married under kimeru tradition without providing any detail or proof of such marriage or ceremony thereof.

[14] Accordingly I am of the considered opinion that the objection has no merit and is dismissed with costs.

Of estate assets

[15] From the evidence tendered, the assets of the deceased are:-

1. Nyaki/Murathankari/764,
2. Nyaki/Giaki/600 and
3. Plot No. 4A Banana.

Sale of land before grant

[16] It has been confirmed that Nyaki/Mulathankari/764 was sold to PW2 by the petitioner. Perusal of the agreement of sale dated 3rd August 2007 reveals that the deceased's sons were the vendors and PW1 was a witness to the agreement. The land was sold before the grant of letters of administration. Accordingly, the five sons listed as vendors were not holders of a grant of representation and could not therefore sell the estate property. In addition, nothing shows that the Grace Karimi Iringo and Jerinder Mukomugo Samson, daughter and widow of the deceased consented to the sale.

[17] The sale of land as is in this case is an incident of intermeddling. Section 45 of the [Law of Succession Act](#) states:

- (1) Except so far as expressly authorized by this Act, or by any other written law, or by a grant of representation under this Act, no person shall, for any purpose, take possession or dispose of, or otherwise intermeddle with, any free property of a deceased person.

Section 2 defines free property is defined as:

“free property”, in relation to a deceased person, means the property of which that person was legally competent freely to dispose during his lifetime, and in respect of which his interest has not been terminated by his death;

The petitioner and the sons of the deceased had no authority to dispose of the estate land herein. The intermeddling was admitted by the petitioner's witnesses and should be dealt with under section 45 of the Act. Therefore, the acquisition by PW2 of estate land is unlawful, and therefore, null and void. The petitioner had no title to pass to PW2. Such acquisition found to be unlawful does not even enjoy the protection of property rights in [the Constitution](#). See article 40(6) of [the Constitution](#) that:-

The rights under this Article do not extend to any property that has been found to have been unlawfully acquired

[18] In light thereof, the purported sale of the estate property is declared null and void. Now, I direct the petitioner to file the mode of distribution of the estate within the next 30 days.

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

Kariuki for Mutegi for objector

Ngugi for Kaume for petitioner

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F. GIKONYO

JUDGE

