



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

FAMILY DIVISION

SUCCESSION CAUSE NO. 3380 OF 2014

IN THE MATTER OF THE ESTATE OF SAMUEL MBUGUA GATHERU (DECEASED)

MARGARET NJERI MBUGUA.....APPLICANT

VERSUS

ELIZABETH WANGUI MBUGUA.....RESPONDENT

RULING

1. The deceased Samuel Mbugua Gatheru died intestate on 20th January 2006. He left a widow Margaret Njeri Mbugua (the applicant) and 12 children:-

- (a) Anne Nyambura Mbugua;
- (b) George Gatheru Mbugua;
- (c) Mary Mukami Mbugua;
- (d) Elizabeth Wangui Mbugua (the respondent);
- (e) Franscisca Wanjiku Mbugua;
- (f) Benard Wango Mbugua;
- (g) Angelica Wambui Mbugua;
- (h) Simon Mwatha Mbugua;
- (i) William Njenga Mbugua;
- (j) Gerald Njoroge Mbugua;
- (k) Elias Murage Mbugua; and
- (l) Hellen Wairimu Mbugua.

2. The deceased left the following properties:-

- (a) Githunguri/Kimathi/609;
- (b) Githunguri/Giathieko/196,394, 394, 374 and 6;

- (c) Toyota pick-up- KAE xxx;
- (d) Toyota KAA xxx;
- (e) shares at Kenya Coffee Farmers' Bank Limited;
- (f) shares at Kenya Commercial Bank Limited serial no. xxxx;
- (g) shares at National Bank of Kenya Limited;
- (h) shares at Housing Finance Co. of Kenya Limited;
- (i) shares at Kenya Airways;
- (j) shares at ICDC Investment Co. Limited;
- (k) shares at Tourism Promotion Services Limited;
- (l) shares at Kenya Commercial Bank Limited serial No. xxxx; and
- (m) shares at Kenya Commercial Bank Limited serial No. xxxx.

3. On 5th October 2016 the applicant was issued with a grant of letters of administration intestate. On 15th March 2018 she applied for the confirmation of the grant and swore an affidavit proposing how she wanted the estate to be shared. She proposed that either the parcels of land be shared equally among all the beneficiaries or that each be registered in her name to hold in trust for all the beneficiaries. As for the shares, she asked that they be held by her in trust for the beneficiaries. She was supported by Anne Nyambura Mbugua, Mary Mukami Mbugua, Angelica Wambui Mbugua and Hellen Wairimu Mbugua who consented to the distribution.

4. The only daughter who opposed her was the respondent who complained that the applicant did not want her to benefit because she was married. She complained how her mother had administered the estate. She did not give the particulars of the alleged mishandling of the estate by her mother. She, however, gave no proposal on how she wanted the estate shared.

5. George Gatheru Mbugua, Bernard Wango Mbugua, William Njenga Mbugua, Gerald Njoroge Mbugua and Elias Murage Mbugua authorised Simon Mwatha Mbugua to swear an affidavit to state they did not want any of the parcels of land to be subdivided because 8 of the 12 children live in various places abroad; they wanted the parcels to remain unsubdivided and left for the use by their mother (the applicant). To avoid any manipulation of their mother by any of the beneficiaries, they asked that the court appoints two or three beneficiaries to be registered jointly with their mother in respect of the parcels to hold in trust for themselves and for the other beneficiaries. The same was for the shares.

6. The applicant swore a further affidavit to say that she wanted all her children, sons and daughters, to equally share in the estate. She stated that since the children were all adults she wanted that the estate be shared so that each can take his/her share. She wanted the dispute to be brought to an end that way. She asked that the movable and household properties and shares in companies be left for her.

7. Under **section 35 of Law of Succession Act (Cap. 160)**, the applicant, the widow of the deceased, is entitled to personal and household effects of the deceased absolutely, and a life interest in the whole residue of the net estate. The net estate should be shared equally among the children. **(In Re Estate of John Musambayi Katumanga (Deceased) [2014]eKLR)**. There is no distinction between female and male children, and neither does it matter whether the children are married or unmarried (**Article 27** of the Constitution).

8. It should also be acknowledged that the applicant directly or indirectly contributed to the acquisition and development of the property during her marriage to the deceased. There was no claim that the property was ancestrally acquired by the deceased. This is the property that now forms the estate. It was registered in the name of the deceased. She had a claim to the estate. The distribution should bear this in mind. A distribution that limits her only to household and personal effects would go against this entitlement, and would offend the spirit of **Article 45(3)** of the Constitution.

9. I consider that each child of the deceased is entitled to an equal share of the net estate. Considering what I have stated in the foregoing, the applicant is entitled to share in the net estate of the deceased. This is over and above her entitlement to household and personal goods left by the deceased. Further, it does not make sense that all these adult beneficiaries be tied together in some trust. There must be those who want to move on with life. I also consider that there is generally no love lost between the male beneficiaries and the female beneficiaries.

10. Githunguri/Kimathi/609 is 8.65 acres; Githunguri/Giathieko/374 is 7.93 acres; Githunguri/Giathieko/196 is 0.89 acres; and Githunguri/Giathieko/394 is 0.5164 acres. I order that all the beneficiaries will equally share each of land parcels Githunguri/Kimathi/609 and Githunguri/Giathieko/374. The share of the applicant in Githunguri/Giathieko/374 will take into consideration that her house is on the parcel. She will get the share where her house is.

11. The daughters will equally share Githunguri/Giathieko/394 while the sons will equally share Githunguri/Giathieko/196. I have tried to be fair equal and equitable.

12. There was no evidence what the acreage of Githunguri/Giathieko/6 is. Whatever is the case it will be registered jointly in the names of

the applicant and Simon Mwatha Mbugua to hold in trust for themselves and all the other beneficiaries in equal shares.

13. The applicant shall be entitled to all personal and household goods left by the deceased. Further, she will be entitled to the two vehicles and the shares in the companies indicated in the foregoing.

14. The grant issued to the applicant shall be confirmed in these terms.

15. This is a family dispute. I make no order as to costs.

DATED and SIGNED at Nairobi this 11TH day of MARCH 2019

A.O. MUCHELULE

JUDGE

DATED and DELIVERED at Nairobi this 13TH day of MARCH 2019

ALI-ARONI

JUDGE