



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

SUCCESSION CAUSE NO. 8 OF 2017

IN THE MATTER OF THE ESTATE OF M'NKANATHA M'MBOGORI (DECEASED)

HARRIET NTIBUKA NKANATA.....PETITIONER

VERSUS

AYUB GITUMA NKANATA.....1ST OBJECTOR

ABRAHAM MURUGU NKANATA.....2ND OBJECTOR

MARGARET GAITI NKANATA.....3RD OBJECTOR

J U D G M E N T

1. **M'NKANATHA M'MBOGORI** (“the deceased”), died on 9th December, 1984 and was survived by 2 widows, 3 sons and 6 daughters. **Harriet Ntibuka Nkanata** (“the petitioner”) applied for letters of administration which was issued to her on 21st September, 2017. Subsequently, she applied for the confirmation thereof on 28th May, 2018.
2. On 18th June 2018, the objectors lodged an objection to the said proceedings on the grounds, *inter alia*, that no consent was sought prior to filing of the petition and that she had concealed material facts.
3. The objectors contended that the petitioner had failed to disclose that **Joseph Kanana** and **Andrew Maingi** were deceased. That **L.R. No. Kiamuri 'A'/1260** and a **plot in Gitimbine** in Meru town, belonged to the deceased. That the Land in **Gakoromone** belonged to **Ayub Gituma** and that the deceased had given **Abothuguchi/Katheri/306** to the 1st house and **Abothuguchi/Katheri/473** to the 2nd House.
4. On 19th June 2018, the grant issued to the petitioner was revoked and by the consent of the parties **Harriet Ntibuka Nkanata** and **Abraham Mburugu Nkanata** were appointed joint administrators of the estate. On 23rd October, 2018, the parties agreed the following to be the beneficiaries of the estate:-

1st House

- a) Harriet Ntibuka Nkanata - widow
- b) Ayub Gituma Nkanata - son
- c) Andrew Maingi - son (deceased) survived by Anritha Karwira
- d) Charity Karega Nkanata - son
- e) Josephine Kanana - daughter (deceased) survived by Rose Nkirote & Brian Ngugi

2nd House

- a) Margaret Gaiti Nkanata - widow
- b) Lucy Mwendwa Nkanata - daughter

c) Jane Kagwira Nkamata - daughter

d) Abrahan Murugu Nkanata - son

5. The parties also consented that the properties available for distribution were, **Abothuguchi/Katheri/ 306, 473 and Gakoromone Plot No.4**. It was also agreed that the supporting affidavit of Ayub Gatumia to the application dated 18th June 2018 be treated as a protest. The parties also filed their proposed modes of distribution which I have considered. The only issue for consideration; is **how should the estate of the deceased be distributed?**

6. The assets and the beneficiaries of the estate have already been agreed upon. The deceased was admittedly polygamous. He left behind 2 widows, sons and daughters. The provision applicable therefore is **section 40 of the Law of Succession Act, Cap 160 Laws of Kenya**. The same provides for equal distribution of the estate whereby each child of the deceased constitutes a unit while each surviving spouse constitutes a separate and independent unit.

7. The protestors produced an agreement entered between the deceased and the owner of **L.R. No. Kiamuri 'A'/1260** in or about 1974 whereby the deceased purchased the said property then measuring 10 acres. A search dated 15th October, 2018 showed that, the petitioner was registered as owner of 0.43 ha in **L.R. No. Kiamuri 'A'/1260**.

8. The petitioner did not explain how she became an owner thereof on 12th November, 1992, 8 years after the deceased died. The only irresistible conclusion is that, the petitioner must have fraudulently sub-divided that property and caused a portion thereof to be registered in her name. She did not explain where the rest of the 9 acres purchased by the deceased in 1974 went. The property must revert back to the deceased and be distributed to the beneficiaries.

9. Having considered the proposals made by the parties and the law, it is always important to discern the intention of a deceased as to the settling of his survivors. It was alleged, and was not denied, that deceased had settled his two houses separately. That is for good reason. It will not be advisable to now bring members of the two houses together if during the lifetime of the deceased, they were living separately. While observing this principle, the court has also to consider the size of the estate.

10. In this regard, I make the following orders: -

a) Property known as **Kaimura "A" 1260** is hereby reverted back to the name of the deceased.

b) The estate is distributed as follows:-

i) Abothuguchi/Katheri/306

Margaret Gaiti Nkanata - 0.76 acres

Lucy Mwendwa Nkanata - 0.76 acres

Jane Kagwira Nkamata - 0.76 acres

Judith Karimi Nkanata - 0.76 acres

Abrahan Murugu Nkanata - 0.76 acres

Charity Karega Nkanata - 0.76 acres

Rose Nkirote & Brian Ngugi - 0.64 acres

ii) Abothuguchi/Katheri/473

Harriet Ntibuka Nkanata - 0.76 acres

Ayub Gituma Nkanata - 0.76 acres

Hellen Gacheri & Annrita Karwira - 0.76 acres

Rose Nkirote & Brian Ngugi - 0.12 acres

iii) Kaimura "A"/1260 (10 Acres)

Harriet Ntibuka Nkanata - 1 Acre

Margaret Gaiti Nkanata - 1 Acre

Ayub Gituma Nkanata - 1 Acre
Hellen Gacheri & Anritha Karwira - 1 Acre
Charity Karega Nkanata - 1 Acre
Rose Nkirote & Brian Ngugi - 1 Acre
Margaret Gaiti Nkanata - 1 Acre
Lucy Mwendwa Nkanata - 1 Acre
Jane Kagwira Nkamata - 1 Acre
Abrahan Murugu Nkanata - 1 Acre

iv) Gakoromone Plot No.4

Ayub Gituma Nkanata

v) Ontulili/Ontulili Block 1/136

Margaret Gaiti Nkanata

Lucy Mwendwa Nkanata

Jane Kagwira Nkamata

Judith Karimi Nkanata

Abrahan Murugu Nkanata.....Equally

vi) Nanyuki Plot No. 99

Harriet Ntibuka Nkanata

Hellen Gacheri & Annritha Karwira

Charity Karega

Rose Nkirote & Brian Ngugi.....Equally

12. There shall be no order as to costs.

DATED and DELIVERED at Meru this 7th day of March, 2019.

A. MABEYA

JUDGE