



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

SUCCESSION CAUSE NO. 344 OF 2012

IN THE MATTER OF THE ESTATE OF GIDEON M'TUARUCHIU

M'MWIREBUA alias GIDEON MWIREBUA alias GIDEON

TURUCHIU alias GIDEON TUARUCHIU MWIREBUA alias

GIDEON M'ITUARUCHIU (DECEASED)

ABRAHAM MOSES BUNDI M'TUARUCHIU.....1ST ADMINISTRATOR

DANIEL MAINGI MURUCHIU..... 2ND ADMINISTRATOR

VERSUS

GEORFFREY KIOGORA..... 3RD ADMINISTRATOR/OBJECTOR

HARRIET KENDI GIDEON.....INTERESTED PARTY

JUDGEMENT

1. GIDEON M'TUARUCHIU M'MWIREBUA alias GIDEON THARUCHIU MWIREBUA alias GIDEON TURUCHIU alias GIDEON TWARUCHIU MWIREBUA alias GIDEON M'ITUARUCHIU ('the deceased') to whom this Succession Cause relates died on 16th April, 1990.

2. The deceased had three wives and was survived by the following:-

1st House – Ruth Mukomuga (deceased)

a) Simon M'Igweta (*deceased*)

b) Ayub Nkanata (*deceased*)

c) Rose Makandi

d) Naomi Ncekei

e) Abraham Bundi

f) Samuel Kathurima (*deceased*)

g) Joyce Kananu

h) Margaret Karamuta

i) Mary Mparu

j) Ann Nambura (*deceased*)

2nd House – Jennifer Wanja (deceased)

a) Elijah Mugambi (*deceased with no child*)

b) Ronald Kinyua (*deceased*)

c) Daniel Maingi

d) Jeremiah Munene

e) Jane Kathang'a

f) Florence Kinaitore

g) Charity Makena

h) Antony Muthuri

i) Benson Muthama Mwenda

3rd House – Joyce Nyoroka (deceased)

a) Serah Kathure

b) Geoffrey Kiogora

c) Jane Kanorio

d) Silas Kaumbuthu (*deceased*)

e) John Gikunda

f) Harriet Kendi

g) Eunice Karwirwa

h) Agnes Kanyiri

i) Gerald Mworira

j) George Thiuru

h) Everlyne Kanana

3. The assets of the deceased that were left in his name comprised of **Kiirua/Kiirua/170, Ntima/Ntakira/349, Ntima/Ntakira/263**, 10 acres in **Kiirua/Nkando/618, Kiirua Market Plot Nos. 4 and 20b**.

4. Simon M'Igweta M'twaruchiu, Daniel Maingi Muteruchiu and Geoffrey Kiogora petitioned for grant letters of administration intestate which were issued to them on 14th June 2013. Later on, **Simon M'Igweta** died and was substituted with **Abraham Moses Bundi** as one of the administrators.

5. On 22nd July, 2013, the 1st and 2nd administrators applied for confirmation of the grant wherein they gave a proposal on how they wished the estate be distributed. However, **Geoffrey Kiogora** objected to this and proposed another mode of distribution through his affidavit, further affidavit and statement filed on 26th March, 2014, 22nd November 2018, 10th February, 2017, respectively.

6. **Harriet Kendi Gideon**, a daughter of the deceased swore an affidavit on behalf of the daughters of the deceased on 21st November, 2018 she opposed the mode of distribution proposed by her brothers as it discriminated against the daughters of the deceased.

7. The matter was determined *vide viva voce* evidence. **PW1 Geoffrey Kiogora** adopted his aforesaid witness statement and affidavits as his evidence. He told the court that the deceased bought for the 1st and 2nd family Land Parcel No. Kiirua/Kiirua/170 measuring 20 acres which was bequeathed to the 1st and 2nd widows and their sons. That the proposed distribution only gifted the sons of those families of that land but the daughters of those houses had not been catered for and should be accommodated on the said land.

8. That Land Parcels Nos. Ntakira/Ngurumo 263 and Ntakira/Ngurumo/349 measuring 6.7 acres and 1.5 acres respectively was meant for the third family. That while Land Parcel No. 263 was shared amongst the sons of the first house parcel No. 349 was occupied by their late mother Joyce Gideon and formed part of the assets of the 3rd house. That in the circumstances, he should be registered as a trustee for his siblings pending their mother's succession cause.

9. That land Parcel No. Kiirua/Nkando/618 originally measured 105 acres but had been fully shared out among all the sons by the deceased. That there only remained 10 acres which was meant for all the daughters of the deceased.

10. **PW2 John Gikunda** adopted his statement dated 8th February 2017 as his evidence. He supported the testimony of **PW1**.

11. The beneficiaries called one witness. **BW1 Harriet Kendi Gideon** adopted her affidavit sworn on 21st November, 2018 as her evidence and testified that land parcel Nos. 349 and 263 were in the name of the deceased. That the deceased gave her brothers land during his lifetime for which they have titles. That since the daughters had not been catered for they should be considered in the distribution of the estate. She gave her own mode of distribution to take care of the interest of the daughters of the deceased.

12. **RW1 Abraham Moses Bundi** relied on his statement and affidavit made on 16th May, 2017 and 31st October, 2018, respectively. He stated that he would like the properties to be distributed as he had proposed in the application for confirmation.

13. He testified that he had distributed to himself 7 acres in plot No. 170 and the rest to his siblings. That in plot No. 263, he had distributed the same amongst the 5 sons of house No. 3 because the deceased had stated so. Regarding plot No. 349, he contended that it should be distributed to him as he was the one who has been harvesting the coffee thereon.

14. He admitted that he had not distributed anything to the majority of his sisters save for Jane Kathang'a on behalf of his brother Elijah Mugambi who is deceased and had left no wife or issue. That the daughters of the deceased should get the remaining 10 acres of plot No. 618.

15. Having considered the evidence and material on record, the issue of determination is; ***how should the estate of the deceased be distributed?***

16. The deceased was polygamous. The provision applicable therefore is ***section 40 of the Law of Succession Act, Cap 160 of the Laws of Kenya***. In distributing the estate of an intestate, the court has to take into consideration certain issues such as whether the deceased had made any advancement or other gift to a dependant during his lifetime as set forth under ***Section 28 of the Law of Succession Act***.

17. All the parties agreed that, during his lifetime, the deceased had shared land parcel No. Kiirua/Nkando/618, measuring about 105 acres, amongst all his sons who have their own respective titles thereto. That he only left 10 acres to be shared by his daughters.

18. Further, it was not in dispute that the deceased gave Kiirua/Kiirua/170 measuring 8.17 ha to the 1st and 2nd house. That he then gave the 3rd house Ntima/Ntakira/263 measuring 2.0094 ha.

19. The mode of distribution proposed by 1st and 2nd administrators support the contention of the 3rd administrator that, Plot No. 170 belonged to the 1st and 2nd house. However, that property has been proposed to be distributed only amongst the sons from the two houses. Plot No. 263 has been distributed amongst the sons of the 3rd house. The daughters do not seem to feature anywhere.

20. Plot No.349 is proposed to be distributed wholly to the 1st administrator on the allegation that the deceased gave it to him and that he is the one who has been harvesting the coffee thereon. This allegation was not backed by any evidence. The mode of distribution proposed by the 1st and 2nd administrators gives the 1st administrator a larger share on the allegation that that was the wishes of the deceased. However, there was no satisfactory evidence to back those claims that that was the wishes of the deceased.

21. I note that the sons had been substantially catered for during the lifetime of the deceased. There was uncontroverted evidence that some of the sons had been gifted of upto about 20 acres (Simon M'Igweta and Ayub Gideon) and 15 acres (Samuel Kathurima). This was apart from the land given to the sons in Kiirua/Nkando 618 up to about 95 acres.

22. Further, it was not clear how many acres each of the sons of the deceased got in Kiirua/Nkando/618. The same was said to have been approximately 105 acres, all of which, save for 10 acres, was distributed to the sons by the deceased during his lifetime.

23. Despite the foregoing, the daughters were not catered for. Considering the principle of equality amongst all children of a deceased as is set out in ***Sections 38 and 40 of the Law of Succession Act, Cap 160***, I am of the view that the remainder of the estate be shared amongst the beneficiaries with a view to take care of the daughters of the deceased who have hitherto not received anything.

24. The parties did not file any valuation reports in respect of the estate. Further, the court takes into consideration the fact that all the properties of the estate may not be of the same value. Accordingly, I do make the following orders: -

a) The grant of letters of administration intestate issued to Abraham Moses Bundi, Daniel Maingi Muturuciu and Geoffrey Kiogora on 14th June 2013 is hereby confirmed and the estate distributed as follows: -

(i) Land Parcel No. Kiirua/Kiirua/170

1. Abraham Moses Bundi - 2 acres
2. Mary Nicera Njira Kandia - 2 acres
3. Jeremiah Munene Mutuaruchiu- 2 acres
4. Margaret Karamuta - 2 acres
5. Jane Kathanga M'Twaruchiu - 2 acres
6. Benson Marangu - 2 acres
7. Antony Muthuri - 2 acres
8. Stephen Kiogora Ayub - 2 acres
9. Marriam Kinya M'Ithinji - 2 acres
10. Daniel Maingi Mutuaruchiu - 2 acres

(ii) Kiirua Market Plot No. 4

Joyce Kananu Whole

(iii) Kiirua Market Plot No. 20B

Naomi Ncekei

(iv) L.R. No. Ntakira/Ngurumo/263

1. Geoffrey Kiogora - 1 acre
2. Maxwel Kimathi Kaumbuthu - 1.acre
3. John Gikunda - 1 acre
4. Gerald Mworira - 1 acre
5. George Thiuru - 1 acre

(v) Kiirua/Nkando Plots - BBC

1. Rose Makandi
2. Florence Kinaitore
3. Charity Makena

(vi) Land Parcel Ntima/Ntakira/349

1. Harriet Kendi
2. Jane Kanorio

(vii) Land Parcel Kiirua/Nkando/618 (10 acres)

1. Mary Mparu Kaaria
2. Estate of Ann Kambura Gedion (deceased)
3. Sarah Kathure
4. Eunice Karwirwa

5. Agnes Kanyiri

6. Everlyne Kanana

7. Ruth Mukomuga Gideon - Equal shares

It is so decreed.

DATED and DELIVERED at Meru this 4th day of April, 2019.

A. MABEYA

JUDGE