



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

SUCCESSION CAUSE NO. 240 OF 2009

IN THE MATTER OF THE ESTATE OF M'BARUTUA KITHIA KINGILI alias BARUTUA KITHIA (DECEASED)

JOHN MEME MBARUTU.....PETITIONER

VS

STANLEY KARURU M'BARUTUA.....1ST RESPONDENT

JACOB MITHIKA M'BARUTUA 2ND RESPONDENT

JUDGMENT

[1] **M'BARUTUA KITHIA KINGILI alias BARUTUA KITHIA** ("the deceased") to whom this proceeding relates died on 15th September, 2003. He was survived by the following:

- 1. Martha Ciokirari - Wife (*deceased*)**
- 2. Rebecca Gitura - Wife**
- 3. Martha Karauki - Wife (*deceased*)**
- 4. Stanley Karuru - Son (*deceased*)**
- 5. Rebecca Mpindi - Daughter**
- 6. Isaiah Mukaria - Son (*deceased*)**
- 7. Grace Nchororo - Daughter**
- 8. Kauninku M'barutua - Daughter**
- 9. Jason Kabilu - Son**
- 10. John Meeme - Son**
- 11. Nkatha M'barutua - Daughter**
- 12. Peter Murungi - Son**
- 13. Jacob Mithika - Son**
- 14. Bernard Mati - Son (*deceased*)**
- 15. Isaac Kiili - Son**

16. Charles Kubai - Son

17. Nathan Kiulio - Son

18. Francis Ntongai - Son

19. Paulina Karimi - Daughter

20. Janet Mbarutua - Daughter

His assets comprising of **Njia/Kiegoi/1129, 1130, 1131, 1132, 1133, 1134 and 1135; Parcel No. 434 Kangeta Adjudication Section; Shares A/C No. xxxxxxxx Barclays Bank and Kshs. 1, 160, 462/- at Barclays Bank A/C No. xxxxxxxx.**

[2] A grant of letters of administration intestate was made to the petitioner on 23rd November 2009 and confirmed on 8th March 2010. However, the said grant was revoked and a fresh grant of letters of administration intestate was issued jointly to Stanley Karuru M'barutua, Daniel Kobia and Peter Murungi M'barutua on 17th November 2014 so as each house is represented. The 1st respondent passed on, and amended grant of letters of administration intestate was issued to Daniel Kobia, Peter Murungi M'Barutua and Jason Kabilu M'Barutua on 28th November 2018.

[3] Summons for confirmation of grant dated 24th November 2018 was filed and was supported by the affidavit of Peter Murungi M'barutua where he proposed that the estate be distributed as follows:

1. Njia/ Kiegoi/ 1129 - John Meme M'barutua

2. Njia/ Kiegoi/ 1130 - Isaac Kiili M'barutua

3. Njia/ Kiegoi/ 1131 - Jacob Mithika M'barutua

4. Njia/ Kiegoi/ 1132 - Charles Kubai M'barutua

5. Njia/ Kiegoi/ 1133 - Lucy Kanario M'barutua

6. Njia/ Kiegoi/ 1134 - Peter Murungi M'barutua

7. Njia/ Kiegoi/ 1129 (I assume he meant to state 1135)

a) **Peter Murungi M'barutua - 0.28 Acres**

b) **Jacob Mithika M'barutua - 0.28 Acres**

c) **Isaac Kiili M'barutua - 0.28 Acres**

d) **Charles Kubai M'barutua - 0.28 Acres**

e) **John Meme M'Barutua - balance**

8. Parcel No. 434 Kangeta Adjudication Section to be registered jointly to:

a) **John Meme M'barutua**

b) **Isaac Kiili M'barutua**

c) **Peter Murungi M'barutua**

d) **Charles Kubai M'barutua**

e) **Jacob Mithika M'barutua**

9. Shares A/C No. xxxxxxxx Barclays Bank to be shared jointly amongst:

a) **John Meme M'barutua**

b) **Isaac Kiili M'barutua**

- c) Peter Murungi M'barutua
- d) Charles Kubai M'barutua
- e) Jacob Mithika M'barutua

10. Money held in the name of Muia Mwanzia & Co Adv. and Murango Nwenda & Co Adv. of Kshs. 1,160,000 60 to be shared equally by:

- a) John Meme
- b) Beatrice Nkatha Kamwibua
- c) Janet Mwari Kalatu
- d) Martha Karauki M'barutua
- e) Peter Murungi
- f) Jacob Mithika
- g) Paulina Karimi
- h) Isaac Kiili
- i) Lucy Kanario Mbarutua
- j) Joyce Kauninko

Protest

[4] A protest was lodged through the affidavit of Daniel Kobia sworn on 29th November 2018. He averred that the deceased gave five of his sons and grand-daughter **Land Parcel Njia/ Kiegoi/ 1129 – 1134** as distributed by Peter. But the deceased had not provided for his two sons Francis Ntongai and Nathan Kiulio while he was alive. Therefore the two ought to share **L. R. No Kangeta Adjudication Section Parcel No. 3267 and No. 4389**. He then proposed that **Plot No. 13B Kiegoi, L. R No. 434 Kangeta Adjudication Section Parcel** and **Barclays bank shares** be sold and proceeds shared equally amongst all the beneficiaries. As for the money in the bank Kshs. 1,160,462/- to be also shared amongst all the beneficiaries. For the **L.R No. Njia/ Kiegoi/ 1135** it be distributed amongst *John Meme M'barutua, Isaac Kiili M'barutua, Charles Kubai M'barutua and Peter Murungi M'barutua*.

[5] Peter Muriungi in his further affidavit sworn on 4th December 2018 agreed that Francis and Nathan should share **L. R. No. 3267 and 4389 Kangeta Adjudication Section** equally. He also agreed with Daniel's proposal on **Njia/ Kiegoi/ 1135** since it is going to their family and that is where the household of Martha Karoki is built. But as for the tea leaves on the land, he proposed that the proceeds be banked in Barclays Bank account and shared amongst their family for they depend on them; this is in consideration that the other two households get proceeds from miraa trees. For **Parcel No. 434** he asserted that it belonged to his mother Martha Karauki thus it belongs to her household as the protestor's household was catered for as follows:

- a) Daniel Kobia - Parcel No. 4388 (1 Acre)
- b) Stanley Karuru - Parcel No. 2474 (2.50 Acres)
- Parcel No. 2932 (0.40 Acres)
- c) Jason Kabilu - Parcel No. 4522 (2.50 Acres)
- d) Isaiah Mukaria - Parcel No. 2164 (1.42 Acres)
- e) Mati Joel - Parcel No. 4390 (2.50 Acres)

ANALYSIS AND DETERMINATION

[6] The court should determine how this estate should be distributed.

Deceased was polygamous

[7] The deceased was a polygamous man. Therefore, the guiding provisions of the law on distribution of this estate **Section 40 of CAP 160**.

In the case of **Stephen Gitonga M'murithi v Faith Ngira Murithi [2015] eKLR** the Court of Appeal held as follows:

“The Appellant's complaint against the above mode of distribution is that it failed to take into account the clear principles of law enshrined in section 38 and 40 of the Law of Succession Act Cap 160 Laws of Kenya. Section 38 enshrines the principle of equal distribution of the net intestate estate to the surviving children of the deceased irrespective of gender and whether married and comfortable in their marriage or unmarried. Section 40 on the other hand enjoins the inclusion of a surviving spouse as an additional unit to each household of a polygamous deceased.”

[8] In distribution, equality amongst all the children of the deceased has been insisted upon by the law and the Constitution. I mean all; not all of a particular gender, status or sex but all. It therefore matters not whether one is a male or female, married or not married, See article 27 of the Constitution which prohibits all forms of discrimination on any of the grounds set out therein. But, I have never ceased to wonder of the assumption that has become obstinate in the minds of many, yet so highly prejudicial; that all property of the marriage belongs to the deceased especially if it is a man. Inadvertently, to be modest, it is assumed all such property forms the estate without regard to the proprietary rights of the surviving spouse especially if it is a woman. I think it is time the law of Succession, as an existing law under section 7 of the sixth schedule of the Constitution, should be brought into conformity with the Constitution on matrimonial rights and property. In my view such property as shall constitute matrimonial entitlement of the surviving spouse is not part of the estate. And, only whence that reality is given practical grip, shall the surviving spouses receive justice- a justice that has been muddled up and unconsciously hidden underneath the message of the law of succession. For instance, there is a practice seemingly inspired by section 40 of the Law of Succession Act where right of the widow is reduced to merely *as an additional unit to the number of children*. This has seen great distortion of the law and outright denial of property rights. Sadly, in many occasions, the value of the additional unit (widow) has been less than that of the children. Does it mean the rights of the widow dissipate completely with the death of the husband? This practice must be fought for it does not fit in this age and time; it does not leave any vivid impression in the mind of the court of a nation that is living and practicing the Constitution and its ethos; It only succeeds in creating a feeling of gauntness and dreariness in the court.

[8] Back to the main. In this cause the deceased had three wives, 11 sons and 6 daughters. From the mode of distribution provided by the administrators, bank shares and money in the bank as well as proceeds from the sale of Plot No. 13B Kiegoi will be shared amongst all the beneficiaries. When it comes to the distribution of land parcels it is evident that it has been divided amongst the sons of the deceased only. Daughters of the deceased have not been catered for neither is there evidence on the record of them relinquishing their rights. Furthermore, they have failed to cater for the wife of the deceased Rebecca Gitura who is still alive.

[9] The administrators agree that some of the deceased sons had been catered for by the deceased. For those that had not they are in agreement of what land parcels they should be bequeathed. Consequently the court will abide with that. However, for the other parcels of land I find that they be bestowed to the daughters and wife of the deceased as they have not been given anything considering that they have a right. I find that **Plot No. 434 Kangeta Adjudication Section and Njia/Kiegoi/1135** be distributed equally amongst the six daughters of the deceased and his wife Rebecca Gitura. For the children who are deceased their shares will form part of their estate for the benefit of their beneficiaries based on the principle of representation as well as **Section 41 of CAP 160**.

[10] Consequently, I make the following orders:

a) Amended grant of letters of administration issued to Daniel Kobia, Peter Murngi M'barutua and Jason Kabilu M'Barutua on 28th November 2018 is confirmed and the estate shall be distributed as follows:

- 1. Njia/ Kiegoi/ 1129 John Meme M'barutua**
- 2. Njia/ Kiegoi/ 1130 Isaac Kiili M'barutua**
- 3. Njia/ Kiegoi/ 1131 Jacob Mithika M'barutua**
- 4. Njia/ Kiegoi/ 1132 Charles Kubai M'barutua**
- 5. Njia/ Kiegoi/ 1133 Lucy Kanario M'barutua**
- 6. Njia/ Kiegoi/ 1134 Peter Murungi M'barutua**
- 7. Njia/ Kiegoi/ 1135 to be shared equally amongst:**

- a) Rebecca Gitura
- b) Rebecca Mpindi
- c) Grace Nchororo
- d) Kauninku M'barutua
- e) Nkatha M'barutua
- f) Paulina Karimi

g) Janet M'barutua

8. Parcel No. 434 Kangeta Adjudication Section to be shared equally amongst:

- a) Rebecca Gitura
- b) Rebecca Mpindi
- c) Grace Nchororo
- d) Kauninku M'barutua
- e) Nkatha M'barutua
- f) Paulina Karimi
- g) Janet M'barutua

9. Shares A/C No. xxxxxx Barclays Bank be sold and proceeds shared equally amongst:

- a) Rebecca Gitura
- b) Stanley Karuru
- c) Rebecca Mpindi
- d) Isaiah Mukaria
- e) Grace Nchororo
- f) Kauninku M'barutua
- g) Jason Kabilu
- h) John Meeme
- i) Nkatha M'barutua
- j) Peter Murungi
- k) Jacob Mithika
- l) Bernard Mati
- m) Isaac Kiili
- n) Charles Kubai
- o) Nathan Kiulio
- p) Francis Ntongai
- q) Paulina Karimi
- r) Janet Mbarutua

10. Money held in the name of Muia Mwanzia & Co Adv and Murango Nwenda & Co Adv of Kshs. 1,160,000 60 be shared equally amongst

- a) Rebecca Gitura
- b) Stanley Karuru
- c) Rebecca Mpindi

- d) **Isaiah Mukaria**
- e) **Grace Nchororo**
- f) **Kauninku M'barutua**
- g) **Jason Kabilu**
- h) **John Meeme**
- i) **Nkatha M'barutua**
- j) **Peter Murungi**
- k) **Jacob Mithika**
- l) **Bernard Mati**
- m) **Isaac Kiili**
- n) **Charles Kubai**
- o) **Nathan Kiulio**
- p) **Francis Ntongai**
- q) **Paulina Karimi**
- r) **Janet Mbarutua**

11. Plot No. 13B Kiegoi be sold and proceeds be shared equally amongst:

- a) **Rebecca Gitura**
- b) **Stanley Karuru**
- c) **Rebecca Mpindi**
- d) **Isaiah Mukaria**
- e) **Grace Nchororo**
- f) **Kauninku M'barutua**
- g) **Jason Kabilu**
- h) **John Meeme**
- i) **Nkatha M'barutua**
- j) **Peter Murungi**
- k) **Jacob Mithika**
- l) **Bernard Mati**
- m) **Isaac Kiili**
- n) **Charles Kubai**
- o) **Nathan Kiulio**
- p) **Francis Ntongai**

q) Paulina Karimi

r) Janet Mbarutua

12. L. R. No Kangeta Adjudication Section Parcel No. 3267 to be share equally between

a) Francis Ntongai

b) Nathan Kiulio

13. L. R. No. Kangeta Adjudication Section Parcel No. 4389 to be shared equally between:

a) Francis Ntongai

b) Nathan Kiulio

Dated, signed and delivered in open court at Meru this 4th day of April, 2019

F. GIKONYO

JUDGE

In presence of:

Mwanzia for petitioner

Mutegi for Murango for objector

F. GIKONYO

JUDGE