



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

SUCCESSION CAUSE NO. 3 of 2012

IN THE MATTER OF THE ESTATE OF ANAMPIU HENRY M'MUGWIKA (DECEASED)

JOSEPH GATONGO HENRY.....PETITIONER

-VS-

EMILY KIRITO ANAMPIU.....1ST PROTESTOR

TERESIA MWONJIRU ANAMPIU.....2ND PROTESTOR

TIOFANA MWATHE ANAMPIU.....3RD PROTESTOR

PAUL MUNATHIA ANANMPIU.....4TH PROTESTOR

JOSEPH KALOO ANAMPIU.....5TH PROTESTOR

DOREEN GAKII ANAMPIU.....6TH PROTESTOR

JUDGMENT

[1] This deceased herein *Anampiu Henry M' Mugwika* was domiciled in Mikinduru Location prior to his death and as per the letter of introduction from the Area Chief dated 13th February 2010 he left behind the following dependents; *Kaembe Henry Anampiu, Joseph Gatongo Henry, Julius Mutua Henry, Peter Mugambi Henry, Hannington Mutemebei, Peninah Karimi, Lydia Karei, Josephine Kaloo, Gakii Doreen, Trophan Mwonthea, Helen Nkirote, Teresia Nyoroka, Julia Mwonjaru*

[2] The petitioner herein filed for letters of Administration on 10th January 2012 and listed the following as the assets of the deceased i.e. *Mikinduru/Athwana/25, Mikinduru/Athwana/518, Mikinduru/Athwana/511.*

[3] Letters of Administration were issued on 29th June 2012.

[4] The objectors filed application dated 3rd October 2016 supported by the Sworn Affidavit of Emily Kirito Anampiu. She averred that the deceased left behind two wives i.e. *Jerusha Kaembe Anampiu (1st Wife, now deceased) and Ann Kajuju Anampiu (2nd Wife, Now deceased)*. From the 1st wife he had six Children; *John Bosco Thairu (deceased), Joseph Gatongo Henry, Julia Mwonjera Anampiu, Julius Mutua Anampiu, Peter Mutua Anampiu, Doris Kajuju Anampiu*. From the 2nd Wife He Had Nine Children; *Peninah Karimi Anampiu (Deceased) Teresia Mwonjiru Anampiu, Tiofana Anampiu, Lydia Karei Anampiu, Paul Mungathia Anampiu, Hellen Nkirote Anampiu, Hellen Nkirote Anampiu, Joseph Kaloo Anampiu, Doreen Gakii Anampiu, Emily Kirito Anampiu*. She also listed the following as the assets of the deceased i.e. *Mikinduru/ Athwana/25, 511, 518, 2743, 4603, Rwarera Farm No. 3592, Akiaga Farm P/No. 4006 and Mikinduri Plot Nos. 7,87,227 & 4002.*

[5] The objectors alleged that Mikinduru Plot No.7 was transferred to Paul Mungathia Anampiu by the deceased during his lifetime. They further averred that the petitioner has sold 1 ½ acres out of L.R. No. Akiaga Farm No. 4006 and that the petitioner had forged Peninah Karimi's signature who had at the time of filing this cause passed on.

Petitioner: beneficiaries consented to sale of land

[6] In a replying affidavit herein dated 22nd February, 2017 the petitioner averred that 1 ½ acres in L.R. No. Akiaga Farm 4006 was sold with the consent of all beneficiaries to cater for the medical expenses of their sickly brother i.e. Paul Mungathia Anampiu. The purchaser, Paskwale Mwiti also filed application dated 28/11/2016 to be enjoined as an interested party.

[7] On 7th November 2016 the Court issued inhibitory Orders on the estate property. On 29th November 2016 it issued protection Orders on the aforesaid properties. In making this determination it held;

‘I note the interested party purchased estate land before confirmation. Such action is in violation of the law and intermeddling within Section 45 of the Law of Succession Act. I therefore issue protection Order requiring the interested party not to enter the land until these proceedings are heard and determined.’

[8] This Honourable Court on 22/2/2017 dismissed the interested party’s application for Joinder on the premise that his acquisition of the estate property was unlawful, hence not protected under Article 40 of the constitution. By the consent of the parties **John Gatongo Henry and Emily Kirito Anampiu** were appointed as joint administrators of the estate.

[9] The petitioner herein filed his proposed mode of distribution on 21st March 2018.

Analysis and Determination

[10] All efforts for parties to agree on the distribution of the estate failed. I must do what the probate court should do; distribute the estate in accordance with the law. The parties have agreed on the beneficiaries as well as the estate property to be as highlighted by the protestors herein.

[11] I have considered the mode of distribution proposed by the petitioner herein. The petitioner alleged that his proposed mode of distribution is as per a meeting held by the deceased together with Protasio Ntuala, John Bosco, her first wife and the area chief. There was however no evidence led in support of this claim. I also note that he proposes to give the daughter of the estate a lesser share and also attempts to substantiate the purchase of 1 ½ Acres by the interested party in Akiaga/Adjudication Section. I reject his proposal for it is not in accordance with the law.

Deceased was polygamous

[12] The deceased was polygamous. However, all his widows have passed on. Thus, he has left behind only children. What does the law say about distribution of an estate such as this? **Section 38 of the Law of Succession Act** Provides;

38. Where an intestate has left a surviving child or children but no spouse, the net intestate estate shall, subject to the provisions of sections 41 and 42, devolve upon the surviving child, if there be only one, or be equally divided among the surviving children.

[13] The principle of equality and equity in section 38 applies in this case. But, as I have stated before, this should be tempered with other relevant circumstances in section 26 and 28 of the Law of Succession Act. In this case, I note that a gift inter vivos was made to Paul Mungathia Mikindiru in Plot No.7- this fact was not disputed. Such gift is taken into account under section 42 of the Law of Succession Act in determining the ultimate entitlement of such beneficiary in the net intestate estate. See section 42 below:

42. Previous benefits to be brought into account

Where

a) an intestate has, during his lifetime or by will, paid, given or settled any property to or for the benefit of a child, grandchild or house; or

b) property has been appointed or awarded to any child or grandchild under the provisions of section 26 or section 35, that property shall be taken into account in determining the share of the net intestate estate finally accruing to the child, grandchild or house

[14] I will now order distribution of the estate. From the different modes of distribution provided by parties and the papers filed, it is extremely difficult to establish the estate property. However, I am able to discern the following properties of the estate property which shall be distributed as hereunder;

MIKINDIRU/ATHWANA/25,511,518,2743,4603

To be shared equally amongst; Estate of John Bosco Thairu (deceased), Joseph Gatongo Henry, Julia Mwonjera Anampiu, Julius Mutua Anampiu, Peter Mutua Anampiu, Doris Kajuju Anampiu, Estate of Peninah Karimi Anampiu (Deceased) Teresia Mwonjiru Anampiu, Tiofana Anampiu, Lydia Karei Anampiu, Paul Mungathia Anampiu, Hellen Nkirote Anampiu, Joseph Kaloo Anampiu, Doreen Gakii Anampiu, Emily Kirito Anampiu.

ANTUAMBURI/ ADJUDICATION/3311

To be distributed equally amongst; Estate of John Bosco Thairu (deceased), Joseph Gatongo Henry, Julia Mwonjera Anampiu, Julius Mutua Anampiu, Peter Mutua Anampiu, Doris Kajuju Anampiu, Estate of Peninah Karimi Anampiu (Deceased) Teresia Mwonjiru Anampiu, Tiofana Anampiu, Lydia Karei Anampiu, Paul Mungathia Anampiu, Hellen Nkirote Anampiu, Joseph Kaloo Anampiu, Doreen Gakii Anampiu, Emily Kirito Anampiu.

RWARERA FARM NO. 3592

To be distributed equally amongst; Estate of John Bosco Thairu (deceased), Joseph Gatongo Henry, Julia Mwonjera Anampiu, Julius Mutua Anampiu, Peter Mutua Anampiu, Doris Kajuju Anampiu, Estate of Peninah Karimi Anampiu (Deceased) Teresia Mwonjiru Anampiu, Tiofana Anampiu, Lydia Karei Anampiu, Paul Mungathia Anampiu, Hellen Nkirote Anampiu, Joseph Kaloo Anampiu, Doreen Gakii Anampiu, Emily Kirito Anampiu.

MIKINDIRU PLOTS NOS. 7, 87, 227 & 4002

Plot No 7 to Paul Mungathia

Balance to be distributed equally amongst; Estate of John Bosco Thairu (deceased), Joseph Gatongo Henry, Julia Mwonjera Anampiu, Julius Mutua Anampiu, Peter Mutua Anampiu, Doris Kajuju Anampiu, Estate of Peninah Karimi Anampiu (Deceased) Teresia Mwonjiru Anampiu, Tiofana Anampiu, Lydia Karei Anampiu, Paul Mungathia Anampiu, Hellen Nkirote Anampiu, Joseph Kaloo Anampiu, Doreen Gakii Anampiu, Emily Kirito Anampiu.

L.R. AKAIGA FARM NO. 4006

To be distributed equally amongst; Estate of John Bosco Thairu (deceased), Julia Mwonjera Anampiu, Julius Mutua Anampiu, Peter Mutua Anampiu, Doris Kajuju Anampiu, Estate of Peninah Karimi Anampiu (Deceased) Teresia Mwonjiru Anampiu, Tiofana Anampiu, Lydia Karei Anampiu, Paul Mungathia Anampiu, Hellen Nkirote Anampiu, Joseph Kaloo Anampiu, Doreen Gakii Anampiu, Emily Kirito Anampiu

[15] The grant herein is accordingly confirmed. Each party shall bear own cost.

Dated signed and delivered at Meru in open court on 2nd day of April, 2019.

.....

F. GIKONYO

JUDGE

In presence of:

MsMuna for Thangicia for petitioner

Kithinji for Igweta for protestor

1st protestor

2nd protestor

3rd protestor

5th protestor

.....

F. GIKONYO

JUDGE