



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

SUCCESSION CAUSE NO. 31 OF 2014

IN THE MATTER OF THE ESTATE OF M'MWERERIA KABURU Alias MWERIA KABURU (DECEASED)

MARTHA CIOMUNGANIA M'MWERERIA.....PETITIONER

VERSUS

CYPRIAN MURUNGI.....1ST OBJECTOR

JOYCE MWATHIMBA THIANE.....2ND OBJECTOR

SOPHIA NKONYAI.....3RD OBJECTOR

JULIA KAROKI.....4TH OBJECTOR

LAWRENCE AKULA.....5TH OBJECTOR

J U D G M E N T

1. **M'MWERERIA KABURU** ("the deceased") died on 30th September, 1983. As per the letter of introduction from the area Chief, Nkinyanga Location dated 1/11/2013 the deceased left behind three (3) spouses and 12 children.
2. **Martha Ciamungania M'Mwereria** petitioned for letters of administration on 30th January, 2014 which was issued to her on 30th April, 2014. She applied for confirmation on 23rd October, 2014 proposing to distribute the estate of the deceased comprising of parcel no. **Njia/Liburu/141** to herself and eight (8) of the beneficiaries.
3. The objector objected to the petition on the ground that the Cause had been filed secretly and that the distribution was not fair. The objection and protests were ordered to proceed by way of viva voce evidence.
4. **Pw1 Lawrence Aluka** testified that he is a son of the deceased. That the deceased had three properties i.e. land in **Kiegoi in Maua, Laikumukum**, Igembe Central and **Njia Settlement Scheme- Parcel No. 141 ("Plot No.141")**. That during his lifetime, the deceased had given the land in Kiegoi to **Cyprian Murungi**, 1st objector, who sold the same and bought other lands in Njia Settlement Scheme.
5. That the petitioner had since sold the land in Laikumukum. That plot no. 141 is occupied by himself (3 acres), Francis Kithera, Esther Kaari, Elias Karuti (2acres) and Maritha Ciomungania (2 acres) and that they have been living there since 1964. He urged the Court to distribute the estate according to their occupation. He denied that Cyprian Murungi had sold the **Kegoi** land to pay a loan.
6. **OW1 Cyprian Murungi** admitted that he was given the land in Kegoi by the deceased during his lifetime but that same was later sold to repay a loan that the deceased had taken from AFC On cross-examination, he stated that his home was in Plot No. 141 and that he left there after the demise of the deceased. His wish was that everyone should get a share in the estate.
7. **RW1 Martha Ciomungania M'Mwereria**, the petitioner, told the court that she was the only wife of the deceased. That she wanted to give Esther Kaari a bigger share because she was the one looking after her. That Cyprian Murungi had already received his share during the deceased's lifetime. She denied that the deceased had taken any loan for which the kigoi land was sold.
8. She denied that Sophia Nkonyai was a daughter of the deceased. She also denied knowing Ciomwirebua Amwiti, Julia Kariuki and Joyce Mwithimba. She confirmed the occupation of the estate land to be as stated by PW1. She confirmed that Seberina, Jacinta, Njeri, Diana Kathambi and Jerusha Kathambi (daughters of the deceased) do not live on the land and have not done so for the last 30 yrs. Since only one of her daughters is married, the others will come back home.

9. The parties filed their respective submissions which the court has considered. The issues for determination are; **who are the beneficiaries of the estate? How should the estate be distributed?**

10. The petitioner dismissed the capacity of Sophia Konyai and Ciomwirebua Amwiti as beneficiaries of the estate claiming they are not daughters and spouse of the deceased, respectively.

11. The letter of introduction by the local chief indicated that the deceased had three wives, the petitioner, **Ciomwirebua and Severina Muruara**. At the trial however, the petitioner disclaimed knowing **Ciomwirebua** or Sophia Nkoyai, one of the children listed as belonging to the said **Ciomwirebua**.

12. **RW1** also testified that as the wife of the deceased, she did not know Julia Karuki and Joyce Mwithimba. Neither the said alleged spouses nor children of the deceased appeared to testify otherwise. Her testimony remained unchallenged. The court has no reason to disbelieve her.

13. In view of the foregoing, I make a finding that the beneficiaries of the deceased are; **Martha Ciomungania, Cyprian Murungi, Lawrence Akula, Severina Gitura, Estate of Elias Karuti, Jacinta Njeri, Daina Kathambi, Jerusha Karimi, Esther Kaari and Francis Kithera**.

14. On distribution, I was satisfied that Cyprian Murungi was adequately provided for by the deceased during his lifetime. He got 3 acres of land at Kigoi. I did not believe that the said land was sold to repay any loan allegedly taken by the deceased. There was no evidence to prove that allegation. In distribution, the court will take that into consideration in terms of **section 42 of the Law of Succession Act**.

15. I have considered the proposals made by the objectors and the petitioners. The proposal that the daughters of the deceased should not benefit from the estate is but discriminatory and against the Constitution and the law.

16. I will here re-iterate what Achode J stated in **re estate of Michael Warui Gicharu (Deceased) [2017] eKLR**, that: -

“The alternative proposals by Robert on the division of property cannot be entertained by this court in so far as they are inconsistent with Clauses (3) (4) and (5) of Article 27 of the Constitution, 2010 which emphasize the principle of equality before the law and the right to equal protection by the law and equal benefit of the law. Men and women have the right to equal treatment, including the right to equal opportunities in political, economic, cultural and social spheres.

Any law including customary law, which is inconsistent with the Constitution, 2010, is void to the extent of the inconsistency and any act or omission in contravention of the Constitution is invalid. The exclusion of the female heirs from the inheritance of the estate as proposed by Robert is patently discriminatory. It is an action which belongs to the dark ages and which this court cannot condone.....”

16. On the contention that the distribution be in accordance with occupation, there was no satisfactory evidence to show that the deceased had divided his property during his lifetime. I therefore hold that the estate of the deceased should be equally distributed amongst all the beneficiaries of the estate save for Cyprian who was already granted his share of the estate during the lifetime of the deceased.

17. In view of the foregoing, the protests are allowed and the estate will be distributed as follows: -

NJIA/LIBURU/141 (3.24 HA)

- a) Martha Ciomungania - 0.36 ha
- b) Lawrence Akula - 0.36 ha
- c) Severina Gitura - 0.36 ha
- d) Francis Kithera - 0.36 ha
- e) Jacinta Njeri - 0.36 ha
- f) Diana Kathambi - 0.36 ha
- g) Jerusha Karimi - 0.36 ha
- h) Esther Kaari - 0.36 ha
- i) Estate of Elias Karuti - 0.36 ha

18. This being a family dispute, I order that each party do bear own costs.

DATED and DELIVERED at Meru this 16th day of May, 2019.

A. MABEYA

JUDGE