



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KITALE

SUCCESSION CAUSE NO. 134 OF 2000

IN THE MATTER OF THE ESTATE OF THE LATE JOANA MUGO KARANJA (DECEASED)

JOSEPH MAINA

ISAAC MWANGI MUGO.....ADMINISTRATORS

VERSES

CATHERINE MURAMBASHA.....ADMINISTRATOR/APPLICANT

JUDGEMENT

1. The deceased herein died on 4th March, 1999 leaving behind the following dependants or beneficiaries,

a. Rebeca Mwangi Mugo...Widow but deceased

b. Isaac Mwangi Mugo.....Son

c. Jacob Murambasha.....Son (deceased)

d. Joseph Maina Mugo.....Son

e. Sarah Wamboi Mugo.....Daughter

f. Priscilla Muhoki Mugo.....Daughter

g. Lakery Njeri Mugo.....Daughter

h. Ann Wangare Mugo.....Daughter

i. Ruth Wanjiru MugoDaughter

j. Tabitha Wangare Mugo.....Daughter.

k. Mary Wamboi Mugo.....Daughter

l. Margaret Wairimu Mugo.....Daughter

m. Peninah Njoki Mugo.....Daughter

n. Rachel Nyambura Mugo.....Daughter.

2. The deceased left behind the following assets;

a. Plot number L.R 2116/11/595(0.0465)

b. KIPSAINA (60 BY 100 FEET)

- c. **TRANS NZOIA /KIPSOEN/52(8.0 HA)**
- d. **TRANS NZOIA/KAISAGAT/199 (6.07HA)**
- d. **SHARES AT CHEBUT TEA FACTORY LTD**
- e. **KLZ 429 MASSEY FURGUSON TRACTOR**
- g. **KSB 501 MASSEY FURGUSON TRACTOR**
- h. **KUT 561 TOYOTA PICK UP**
- i. **SHARES AT NATIONAL BANK**
- j. **SHARES AT KENYA AIRWAYS**

3. After several applications which are already on record and which the court has already made determination, the applicant vide her application dated 30th June, 2017 applied that the grant issued on the 3th December, 2013 be confirmed.

4. It is worth noting that the deceased widow though given to administer the estate died before she could distribute. The applicant Catherine Murambasha is the deceased daughter in law having been married by his son the late Jacob Murambasha.

5. From the record it is apparent that the deceased was monogamous and the beneficiaries are therefore from one house. The applicant contents that before their mother died she had already given a road map on how the estate was to be distributed and she went ahead to reduce it into writing which document was attached to the application.

6. The respondents who are the deceased's sons have refuted the said proposed mode of distribution by their late mother and the bone of contention is the entitlement of the Applicant their sister in law. They argue that she did not have any child with their late brother and that she remarried after the death of her husband.

7. The Applicant on her part disputes this and states that she has not remarried after the demise of her husband and that there was no proof by the Respondent of such remarriage.

She stated that in any case her late husband was a beneficiary to his father's estate just like the rest of the dependants.

8. The parties were directed to file written submissions so as to ventilate any issues but it was only the applicant who did so.

9. Be it as it may, the two issues to be canvassed herein are the question of whether the applicant. A daughter in law has any right of inheriting from the estate.

10. Secondly, can it be said that the proposed mode of distribution by the widow was proper and acceptable in the circumstance? If not how should the estate be distributed?.

11. The question of the marriage between the applicant and the late Jacob the son to the deceased was not disputed and there is nothing to the contrary. Jacob's name was clearly mentioned just like the rest of the Respondents herein. For the Respondents to deny that she should not inherit a share due to their late brother is hypocritical. I state so because if their brother was alive he would definitely have inherited his share.

12. Further the question whether they were blessed or not with any issue does not lie. Although that has been refuted by the applicant, the same cannot be a basis for denying her to inherit his late husband's share of the estate of his late father.

13. There was no evidence that she has remarried since the death of her husband but she states that she has been forcefully chased away from working on the estate and specifically where she was all along.

14. In this courts considered view the applicant just like the Respondents has a right of inheritance in the estate first as a daughter in law and specifically what her late husband was entitled to if he was alive to date.

15. Even for argument sake the respondents would expect that had they predeceased the confirmation of the grant herein they would have expected their spouses or their children to inherit their entitlement in the estate herein.

16. The court has perused the minutes of a family meeting which was signed and witnessed by Edel Fuchaka Advocate on 6th July' 2005 which clearly cemented the rights of the applicant in the estate and it is ironical for them to deny her that right yet they acknowledge that she would inherit what was entitled to her late husband.

17. On the proposed mode of distribution by the applicant which mirrors that of her mother in law, this court is inclined to accept the same for the simple reason that it appears to have been inclusive and has already been implemented. More importantly there was no other mode which one could consider as an alternative by the rest of the beneficiaries.

18. In fact the surveyors already went to the ground to implement the same and there has never been any disputes to date, brought forth by any of the parties.

19. There are other assets like the shares which the parties have no issues with and I think that the best approach would be to dispose off the same and share the proceeds equally.

20. In view of the above observations the deceased estate should be distributed as follows;

A. LAND PARCEL NUMBER TRANS NZOIA/KIPSOEN /52.

1. ISAAC. M. MUGO..... 5 ACRES

2. 4 ACRES OF TEA BUSHES to be shared equally between ISAAC M. MUGO ..1.33 ACRES, JOSEPH MAINA MUGO ...1.33 ACRES and CATHERINE MURAMBASHA1.33 Acres respectively.

3. The remaining 10 acres to be shared equally between the daughters namely SARAH .W. MUGO, PRISCILA .M. MUGO, LAKERY .N. MUGO, ANN.W.MUGO,RITH.W. MUGO, TABITHA.W.MUGO, MARY .W. MUGO, MARGARET. W. MUGO, PENINA N. MUGO, and RACHEL .N. MUGO.

B. PLOT NUMBER TRANS NZOIA /KAISAGAT/199.

1. CATHERINE MURAMBASHA5 Acres

2. JOSEPH MAINA 5 Acres

3. PRISCILLA MUIHAKI.....3 Acres

4. One KINUTHIA - 2 Acres.

5. TRACTOR KSB 501 MASSEY FURGUSON TO ISAAC MWANGI

6. TRACTORS REGISTRATION NUMBERS KLZ 429 and KLE 986 to be utilised by the family.

7. LR NO . 2116/111/595 CO owned by JOSEPH MAINA and PRISCILLA MWHIHAKE

8. Any shares from National Bank Ltd, Chebut Tea Factory Ltd and Kenya Airways to be sold and the proceeds therefrom to be shared equally among the beneficiaries herein.

21. The parties should ensure that during the subdivision of the parcels of lands ,care should be taken so that there is not much displacement or disturbance especially in situations where the respective beneficiaries have develop.

22. This being a family dispute each party shall meet their respective costs.

Dated, signed and delivered in open court at Kitale this 15th day of May, 2019.

H.K.CHEMITEI

JUDGE.

15/5/19

In the presence of:-

Nyakundi for the Applicant

Wanyama for Karani for the Petitioner

Court Assistant – Kirong

Judgment read in open court.