



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

SUCCESSION CAUSE NO. 5 OF 1995

**IN THE MATTER OF THE ESTATE OF SIMON IKANDI GITUNGA ALIAS SIMON M'IKANDI ALIAS SIMON GIKANDI-
DECEASED**

DOMESIANO MBAYA IKANDI.....1ST ADMINISTRATOR

JUSTINE KATHAMBI MAITIMA.....2ND ADMINISTRATOR

VERSUS

PATRICK MUTETHIA.....OBJECTOR

RULING

On 21st day of November 2018 grant made to Domiciano Mbaya Ikandi, Justine Kathambi Matima and Pascasio Mutua to administer the estate of the late Simon Ikandi Gitunga alias simon M'Ikandi alias Simon Gikandi were revoked and same made a fresh to Domiciano Mbaya, Justin Kathambi and Patrick Mutethia on same date.

Domisiano Mbaya Ikandi and Justine Kathambi Maitima with consent of Henry M'Amathi M'Ikandi, Fidelis Ngaruni Ikandi, Christina Kithera and Pascasious Mutua Ikandi filed summons for confirmation of grant dated 4th February 2019.

The deceased herein died intestate on 11th March 1972 and left behind:-

1. Widow- Kanini Simon
2. Augustion Maitima – son
3. Teresia Muchana – daughter
4. Henry Mugambi – son
5. Alex Murugu – son
6. Justina Kathambi – son
7. Videle Ngaruni – son
8. Christna Kithure – daughter
9. Domisiano Mbaya – son
10. Pascasio Mutua – son

The deceased persons widow died while this cause was pending determination. Augustina Maitima the father to Patrick Muthethia Maitima also did while cause was pending and Patrick Mutethia was made 3rd Administrator in his place. Patrick Mutethia claimed that his late father was entitled to an equal share in the estate since he was son of the deceased and that the deceased persons other sons also had land elsewhere like the rest of the sons who are beneficiaries in the estate.

Form P& A 5 indicates the deceased persons assets:-

a) LR No. Nyaki/Giaki/447 approx 17.50 acres

b) LR No. Nyaki/Nkabune/493 approx. 0.64 Ha

Initially Alex Murugu who took out letters of administration made proposal on how to distribute the estate in an affidavit sworn on 17th July 1998 to the effect LR. No. Nyaki/Nkabune/493 was to devolve to him in whole whereas LR No. Nyaki/Giaki/442 was to be distributed as follows:-

a) Severina Kanini – 1.00 acre

b) Henry Mugambi – 1.50 acres

c) Domisiano Mbaya – 2 acres

d) Parkacio Mutugi – 5 acres

e) Fidelis Ngaruni – 5 acres

f) Domisiano Mbaya – 3 acres

Certificate of confirmation dated 23rd September 1998 was issued to that effect. It is true that the name of Augustino Maitima the father of Patrick Mutethia who was also a beneficiary in the estate didn't feature anywhere.

In the current mode of distribution proposed by Domisiano Mbaya Ikandi and Justine Kathambi Maitima:-

a) The family of Augustino Maitima is being given 0.48 acres in LR. Nyaki/Nkabune/493.

b) Henry M'Amathu M'Ikandi is getting 0.50 acres

c) Family of Alex Murugu is getting 0.50 acres

Whereas LR. Nyaki/Giaki/442 is being distributed to

a) Fidelis Ngarune – 5.854 acres

b) Pascacious Mutua – 5.83 acres

c) Domisiano Mbaya – 5.83 acres

The criteria for mode of distributing has not been explained. Justine Kathambi Maitima and Christina Kathira swore affidavits dated 4th February 2019 denouncing their entitlement to the estate and the court respects their decision.

However the court finds that the distribution favours Fidelis Ngaruni, Pascacious Mutua and Domisiano Mbaya without any reasonable explanation. The deceased died on 11.3.1972 and this court cannot accept claims that on 16.3.1985 clan elders sat with the deceased persons sons to execute the wishes of the deceased. In any case, there is nothing in those minutes which show that the deliberations were **wishes** from the deceased. In any case if the deceased had indicated any wish there should have been consistency in manner of distribution of the estate which is not the case herein. Photographs in the list of documents to 1st and 2nd Respondents are not explained how they effect the estate herein and whose developments they are. It is not explained the criteria used in the distribution as alleged to be the wish of the deceased as opposed to the criteria used by Alex Murugu in the initial distribution and the one used by Domisiano and Justine in their affidavit sworn on 4th February 2019.

The 1st and 2nd Administrators have not shown that Augustino Maitima had benefitted in any way inter vivos and therefore the court cannot rely on the claim in submissions that the deceased instructed that Augustino Maitima and Alex Murugu would not benefit from LR 442 – Nyaki/Giaki and should therefore relocate to their other parcels of land. Claims that the deceased gave instructions to Henry M'Amathu in 1970 in company of Alex Murugu and Augustino Maitima cannot be verified because the later 2 are since deceased.

It is therefore the view of this court that the deceased having died intestate his estate shall be distributed to the beneficiaries in accordance with section 35(5) of the law of succession Act in equal shares unless the beneficiaries agree otherwise. The 2 daughters of the deceased have sworn affidavits renouncing their rights and therefore their wish will be respected by the court. There shall be no orders as to costs.

HON. A.ONG'INJO

JUDGE

RULING DELIVERED, DATED AND SIGNED IN COURT ON 9TH MAY 2019.

In the presence of:

C/A:

1st Administrator:- Present in person

2nd Administrator:-Present in person

Objector:- Present in person

Mr Muthomi Advocate for Administrator – present in person

Mr Murango advocate holding brief for Ringera for objector.

HON. A.ONG'INJO

JUDGE