



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT CHUKA

MISC. SUCCESSION APPLICATION NO. 47 OF 2016

IN THE MATTER OF THE ESTATE OF THE LATE MURUNGI

KIUGU alias SAMUEL M'MURUNGI KIUGU (DECEASED)

ELIPHAS NYAGA SAMUEL.....PETITIONER/APPLICANT

VERSUS

JOY KATHOMI.....1ST PROTESTOR

JANE GATAKA.....2ND PROTESTOR

ROSE WANJA.....3RD PROTESTOR

SAMMY KIRIMI NJERU.....4TH PROTESTOR

SMITH KIMATHI NJERU.....5TH PROTESTOR

J U D G M E N T

1. This cause relates to the estate of the late **MURUNGI KIUGU alias SAMUEL M'MURUNGI KIUGU** (deceased) who died intestate on 3rd July 1998 domiciled at Mugumango.

2. The Petitioner/Administrator, **ELIPHAS NYAGA SAMUEL** was appointed the administrator of the estate of deceased herein on 7th February, 2017 after the revocation of the earlier grant issued via ***Runyenjes Principal Magistrate's Court Succession Cause No. 119 of 2015***. The deceased left the following dependants surviving him namely:-

- i. Jenniffer Ntue Ruria - (deceased)
- ii. Billiah Kanyua Karangu
- iii. Nahashon Miriti Samuel - (deceased)
- iv. Susan Ithiru David
- v. Belassis Nyaga Samuel - (deceased)
- vi. Timothy Njeru Samuel - (deceased)
- vii. Josephine Ithiru Samuel
- viii. Danstun Murugi Samuel - (deceased)
- ix. Eliphas Nyaga Samuel
- x. Caroline Kagendo Samuel

xi. Dinah Ithima Samuel

3. The properties listed as comprising the estate are as follows namely:-

a) Muthambi/U.Karimba/130

b) Muthambi/U.Karimba/318

c) Muthambi/S.Mugumango/917

d) Muthambi/S.Mugumango/813

4. The administrator has moved this court vide Summons for Confirmation of Grant dated 26th March 2018 to have the grant issued to him confirmed proposing to have the estate distributed as follows:-

(A) L.R. No. Muthambi/U.Karimba/130 - (Approximately 1.48. acres);

a) Eliphaz Nyaga Samuel - 0.30 acres

b) Esther Karimi Nyaga - 0.30 acres

Erick Mutwiri Murungi

c) Sammy Mutembei Nyaga 0.3 acres jointly

(d) Sammy Kirimi Njeru

Smith Kimathi Njeru

Rose Wanja

Jane Gatakaa 0.30 acres jointly

Joy Kathomi

(e) Hellen Nkari Nahashon - 0.30 acres

(B) L.R. No. Muthambi/U/Karimba/318 (measuring approximately 2.7 acres).

a) Hellen Nkari Nahashon - 0.9 acres

b) Josphine Ithiru Mutegi

Dinnah Ithima M'Murungi

Susan Ithiru David 0.9 acres jointly

Billah Kanyua Karangu

Caroline Kagendo Samuel

(c) Sammy Kirimi Njeru

Smith Kimathi Njeru 0.9 acres

Rose Wanja

Jane Gatakaa

Joy Kathomi

(C) L.R. No. Mwimbi/S.Mugumango/917 (measuring approx. 1.58 acres)

(a) Eliphaz Nyaga Samuel - 0.4 acres

(b) Esther Karimi Nyaga - 0.4 acres

(c) Sammy Mutembei Nyaga

Erick Mutwiri Murungi - 0.4 acres jointly

(d) Sammy Kirimi Njeru

Smith Kimathi Njeru

Rose Wanja - 0.4. acres jointly

Jane Gatakaa

Joy Kathomi

(D) L.R. No. Mwimbi/S. Mugumango/813- (Approx. 5 acres)

a) Eliphaz Nyaga Samuel - 1.25 acres

b) Esther Karimi Nyaga - 1.25 acres

c) Sammy Mutembei Nyaga

Erick Mutwiri Murungi - 1.25 acres jointly

(d) Sammy Kirimi Njeru

Smith Kimathi Njeru

Rose Wanja - 1.25 acres jointly

Jane Gatakaa

Joy Kathomi

4. The proposal met some resistance from Joy Kathomi, Jane Gatakaa, Rose Wanja, Sammy Kirimi Njeru and Smith Kimathi Njeru who filed an affidavit of protest through Joy Kathomi sworn on 3rd July 2018. The protestors' main bone of contention is that Billiah Kanyua Karangu is now deceased and cannot be given a share. They also proposed that the children of Timothy Njeru (a deceased son of deceased in this cause) be settled in one parcel instead of fragmenting the estate into uneconomical units. They have made the following proposal on the distribution of estate.

(A) L.R. Mwimbi/S.Mugumango/813- (measuring approx 5 acres)

i. Eliphaz Nyaga Samuel - 1.25 acres

ii. Esther Karimi Nyaga - 1.25 acres

iii. Sammy Mutembei Nyaga - 1.25 jointly

Erick Mutwiri Murungi

(iv) Sammy Kirimi Njeru

Smith Kimathi Njeru

Rose Wanja - 1.25 jointly

Jane Gatakaa

Joy Kathomi

(B) L.R No.Muthambi/U.Karimba/130 (measuring approx 1.48 acres)

Sammy Kirimi Njeru

Smith Kimathi Njeru

Rose Wanja whole jointly

Jane Gatakaa

Joy Kathomi

(C) L.R No. Muthambi/U.Karima/318 (Approximately 2.7 acres)

i. Susan Ithiru

ii. Josephine Ithiru

iii. Caroline Kagendo jointly

iv. Dinah Ithima

(D) L.R. Mwimbi/S. Mugumango/917 (Apprpx 1.58 acres)

i. Eliphaz Nyaga Samuel - 0.53 acres

ii. Esther Karimi Nyaga - 0.53 acres

iii. Sammy Mutembei Nyaga

Erick Mutwiri Murungi - 0.53 acres

5. This court has considered both proposals by both sides. I have also considered the evidence tendered during the hearing of the protest canvassed through viva voce evidence. What has come out clearly is that despite the protests filed the parties in this cause have majorly agreed on who the beneficiaries are and that each beneficiary is entitled to a share. I have noted from the evidence tendered the late Nahashon Miriti Samuel benefitted from a gift inter vivos from the deceased herein in his lifetime and therefore his family are not laying a claim in the estate herein. It also transpired during trial that one of the named beneficiaries Billiah Kanyua Karangu is now deceased. That means that the number of children of the deceased to benefit are 8 or eight units. The provisions of **Section 38 of Law of Succession Act** provides that an estate of a deceased person dying instate without a surviving spouse should be distributed equally among all the surviving dependants.

6. The estate, as observed above comprises the following properties namely;

a) L.R No. Muthambi/U. Karimba/130 - 1.56 acres

b) L.R No. Muthambi/U.Karimba/318 - 2.7 acres

c) L.R. No. Mwimbi/S. Mugumango/917 - 1.56 acres

d) L.R. No. Mwimbi/S . Mugumango/813 - 4.9 acres

Total 10.77 acres

A simple calculation will reveal that each unit/beneficiary is entitled to approximately 1.3 acres. It is therefore clear that from the two proposals the proposal by the protestors is largely a reflection of a fair distribution of the deceased because really the daughters have foregone their entitlement (by almost half an acre) and one would have expected the administrator duly represented by counsel to grab the offer with both hands. This court is minded to give the members of the family a chance to live cohesively and peacefully and it is on that basis that I am inclined to confirm the grant issued on 7th February, 2017 which I hereby do as per paragraph 7 of the affidavit of Joy Kathomi sworn on 3rd July, 2018.

Dated, signed and delivered at Chuka this 18th day of June, 2019.

R.K. LIMO

JUDGE

18/6/2019

Judgment signed, dated and delivered in the open court in presence of Kijaru holding brief for Murithi for Petitioner and in presence of 3rd and 4th protestors.

R.K. LIMO

JUDGE

18/6/2019