



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KERUGOYA

SUCCESSION CAUSE NO. 40 OF 2015

IN THE MATTER OF THE ESTATE OF THE LATE DAVID MBUGUA KINYANJUI (DCD)

BETWEEN

NYAMBURA MBUGUA.....PETITIONER

V E R S U S

GEOFFREY WAREGA MBUGUA.....PROTESTOR

JUDGMENT

1. This matter relates to the estate of David Mbugua Kinyanjui (deceased).
2. The petitioner Nyambura Mbugua applied for Grant of Letters of Administration intestate of the estate of David Mbugua Kinyanjui (deceased) which she was granted on 29/11/2011. She applied for confirmation of grant on 05/05/2015 and indicated that the deceased was survived by one widow and 14 children.
3. In her amended affidavit she proposed that the deceased's estates be determined as follows;
 - a) **Naivasha/Maraisushu Bloc 8/311** - Francis Kinyanjui and Nyambura Mbugua jointly
 - b) **Dundori/Mugwathi BL 1/537 Wanyororo** –
 - **Nyambura Mbugua – 0.3764 Ha**
 - **Francis Kinyanjui Mbugua and Michael Kimani Mbugua – 0.1882 Ha**
 - **Muthee Mbugua and Geoffrey Warega Mbugua – 0.1882 Ha**
 - c) **Lock-ups at Maisha Kamili in Wang'uru town** shared equally
 - d) **Plot No. C408 – Wang'uru** - Nyambura Mbugua
 - e) **L/UP A 10 Wang'uru** – Michael Kimani Mbugua
 - f) **Witeithie Plots Witeithie Waka Investments LTD 0.33 Farm No. 3** - Francis Kinyanjui and Nyambura Mbugua jointly
 - g) **Shares with Centum Investment, Safaricom, Kenya Re-Insurance, KCB, Barclays, National Bank of Kenya, Kenya Airways and Co-operative Bank** - Francis Kinyanjui and Nyambura Mbugua jointly

Protestors' case

The protestor Geoffrey Warega Mbugua proceeded to file an affidavit in protest on 18/05/2016. He stated that the petitioner did not disclose all the properties of the deceased, that is **Lock-up No. 46 and No. 56 Wang'uru**. That the estate owes him Kshs. 100,000/= which he paid on behalf of his house towards rates arrears to plot and debts which the estate owes the authority. That he is not agreeable to Francis Kinyanjui Mbugua be registered as the sole proprietor on behalf of his family and proposed that he also be included and they both be registered as trustees.

4. In his further affidavit, he stated that both his brother Munene Mbugua and himself to directly represent their interest and not through their

brother Francis Kinyanjui Mbugua. He proposed that their names be entered in the following properties;

a) Naivasha/Maraisushu Bloc 8/311 - Geoffrey Warega Mbugua, Muthee Mbugua, Francis Kinyanjui – 3 acres and Nyambura Mbugua – 2 acres

b) Dundori/Mugwathi BL 1/537 Wanyororo – as initially proposed by himself but not with Nyambura Mbugua

c) Witeithie Plots Witeithie Waka Investments LTD 0.33 Farm No. 3 - Geoffrey Warega Mbugua, Muthee Mbugua, Francis Kinyanjui and Nyambura Mbugua

d) Shares with Centum Investment, Safaricom, Kenya Re-Insurance, KCB, Barclays, National Bank of Kenya, Kenya Airways and Co-operative Bank - Geoffrey Warega Mbugua, Muthee Mbugua, Francis Kinyanjui and Nyambura Mbugua

5. Francis Kinyanjui Mbugua and John Kimani Mbugua filed affidavit stating that the deceased had two wives but was survived by one being the petitioner herein. That all members of the family are in agreement that the estate be shared equally between the two houses. That they also agreed that be shared out as proposed by the petitioner's affidavit and opposed the proposal of the protestor that he be awarded **Dundori/Mugwathi BL 1/537 Wanyororo** alone.

6. The protest was heard by way of viva voce evidence and parties adduced evidence which was in line with the averments in their respective affidavits.

7. The parties herein were not opposed that the property be shared equally. The petitioner told court that the estate has been distributed equally between the two houses.

9. The protestor has however not adduced any proof of the outstanding debt of Kshs. 100,000/= which he claims from the estate. In addition, the two properties allegedly left out of the estate of the deceased have not been adequately proved on the issue of ownership therefore they cannot be included. The protestor has not proved that the two plots exists as properties of the deceased. The proposed mode of distribution by the petitioner has been supported by Francis Kinyanjui Mbugua who swore an affidavit on 8/1/2019.

10. Having considered the protest, the issue is that each beneficiary be given his share other than have one person registered in trust for the others. Secondly, the protestor is claiming that land parcel No. Dundori/Mugwathi Block 1/1537 Wanyororo to go to himself but not to be shared equally with the petitioner.

11. On the first issue, **Section 40 of the Law of Succession Act** provides for the distribution of the estate where the deceased had married more than one wife. The Section provides:-

“(1) Where an intestate has married more than once under any system of law permitting polygamy, his personal and household effects and the residue of the net intestate estate shall, in the first instance, be divided among the houses according to the number of children in each house, but also adding any wife surviving him as an additional unit to the number of children.

(2) The distribution of the personal and household effects and the residue of the net intestate estate within each house shall then be in accordance with the rules set out in sections 35 to 38.”

12. The Section provides that the estate shall be divided among the houses according to the number of children and adding the wife as an additional unit.

13. The petitioner has proposed this mode of distribution which I find is in accordance with **Section 40** above. The protestor has not disputed that the estate should be distributed equally among the two houses. This being the case since the section provides that the distribution be in accordance with the number of children there would be no harm in having each beneficiary in the house of the protestor getting his own share. The members of that house are all adults and there is no need of having one registered in trust.

14. This would not conclusively distribute the estate. In any case the protestor has deponed that himself and his brother Munene want to get their shares directly but not to be represented by Francis Kinyanjui Mbugua.

15. In that regard I make an order that the mode of distribution be as proposed by the petitioner which is to say the estate be distributed equally between the two houses. The share of the petitioner's house to go to her as there is no dispute while the 2nd house, their share be distributed equally between the beneficiaries of that house who are listed as:-

- **Francis Kinyanjui Mbugua**
- **Muthee Mbugua**
- **Michael Kimabi Mbugua,**
- **Geoffrey Warega Mbugua.**

16. On the issue of the property at Dundori, there is no dispute that it belongs to the estate of the deceased. The protestor has not proved that it was given to him as gift by the deceased. The fact that he has been using the land does not entitle him to get the land at the exclusion of the petitioner's house. The property is a free property of the deceased and forms the estate of the deceased as defined under the Act. The land Parcel No. Dundori/Mugwathi BL 1/537 Wanyororo should be distributed as proposed by the petitioner.

17. The protestor has not proved that he owed money by the estate nor did he prove that there were properties of the deceased which were left out. These claims in the protest are dismissed.

18. In conclusion I find that the estate should be distributed as proposed by the petitioner safe that the members of the house of the 1st wife shall have their share distributed to them individually.

19. The protest succeeds to that extent only. I make no orders as to costs.

Dated at Kerugoya this 6th day of June 2019.

L. W. GITARI

JUDGE