



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT CHUKA

SUCCESSION CAUSE NO. 209 OF 2019

(FORMERLY CHUKA PM SUCC. CAUSE NO.230 OF 2010)

IN THE MATTER OF THE ESTATE OF THE LATE MUCHURU NJERU (DECEASED)

FREDRICK NYAGA MUCHURU.....1ST ADMINISTRATOR/APPLICANT

VERSUS

JOHN MICHENI RIUNGU.....2ND ADMINISTRATOR/PROTESTOR

J U D G E M E N T

1. This cause relates to the estate of the late Muchuru Njeru (deceased) who died on 7th January 2005 domiciled at Mariani Sub- Location. The deceased died intestate and left the following children surviving him namely:-

- i. Cianjoka Muchuru
- ii. Erastus Mbungu Muchuru
- iii. Atanasio Mutegi
- iv. Rusia Ciandeke (deceased)
- v. James Mbuba
- vi. Ndiga Muchuru
- vii. John Micheni Riungu

2. The estate of the deceased comprised the following assets namely:-

- i. L.R. Karingani/Ndagani/3751 - 2 acres
- ii. Mariani Adjudication Section No.320 now registered as Karingani/Marinai/320 - 2 acres.

3. The record of proceedings in this cause shows that **JOHN MICHENI RIUNGU** and **FREDRICK NYAGA MUCHURU** were appointed joint administrators on 27th November 2017 after revocation of an earlier grant issued on 21st February 2011.

4. Fredrick Nyaga Muchuru vide Summons for Confirmation of Grant dated 8th December 2017 applied for confirmation of grant given that the administrators had been granted leave to apply for confirmation of grant before expiry of 6 months statutory period. In his application, the 1st administrator proposed to have the estate distributed as follows:-

(A) L.R. KARINGANI/NDAGANI/3751

- i. John Micheni Riungu - 0.4 acres
- ii. Atanasio Mutegi Muchuru - 0.4 acres

- iii. Ndiga Riungu Muchuru - 0.4 acres
- iv. James Mbuba Muchuru - 0.4 acres
- v. Fredrick Nyaga Muchuru - 0.4 acres

(B) L.R KARINGANI/MARIANI/320

- i. Josphine Cianjoka
- ii. Idah Maruta 1.0 acres
- iii. Albert Gitari Mbungu
- iv. Mwiti Nyaga
- v. James Kirimi Mbuba 1.9 acres jointly
- vi. Nicholas Murithi ndiga
- vii. Christopher Mwiti Michine
- viii. Kathure Atanasio Mutegi

5. The 2nd administrator appears to have been unimpressed by the proposal and filed an affidavit of protest sworn on 4th May 2018. In his protest, John Micheni Riungu asserted that the deceased prior to his demise had bequeathed some of his properties to his sons and transferred the properties to the beneficiaries and that he only left behind L.R No. Karingani/Ndagani/3751 and L.R No. Karingani/Mariani/320.

6. The protestor agreed with the 1st administrator that the deceased had expressed his wish that Karingani/Mariani/320 be given to his grandchildren and he had no objection to that.

7. He asserted that parcel No. Karingani/Ndagani/3751 was meant to be his and he should be the sole beneficiary. He has averred that the 1st administrator was parcel No. Karingani/Ndagani/3750 but he denies that he was given the parcel on account of the hospital bills he paid. He has denied that he benefitted from a parcel known as Karingani/Mariani/3760.

8. At the hearing of the protest herein, the 1st administrator reiterated that he redeemed parcel of land No. Karingani/Ndagani/3750 which had been used as security for hospital bill at Chogoria Hospital in respect of their late mother- Martha Muchuru. He further agreed with the protestor on the fact that the deceased had bequeathed the following sons with the following parcels in his lifetime;

- i. Erastus Mbungu Riungu - L.R Karingani/Ndagani/3779&Karingani/
Mariani/317
- ii. John Micheni Riungu - L.R Karingani/Mariani/3760
- iii. Ndiga Riungu Njeru - L. R Karingani/Mariani/3604
- iv. Jeremano Mbuba - L.R Karingai/Mariani/3859
- v. Fredrick Nyaga Muchuru - LR. Karingani/Mariani/3605
- vi. Atanasio Mutegi - L.R Karingani/Mariani/3860

9. It was his evidence that the deceased prior to his death, deceased had expressed his wish that the following grandchildren be given Parcel No. Karingani/Mariani/320;

- i. Albert Gitari Mbungu
- ii. Mwiti Nyaga
- iii. James Kirimi Mbuba
- iv. Nicholas Murithi Ndiga

v. Christopher Mwititi Micheni &

vi. Kathure Atanasio Mutegi

He averred that all the grandchildren to benefit are children of all the sons of the deceased. He added that they decided to give the two daughters namely Josphine Cianjoka and Idah Maruta 1 acre to share jointly after compromising as a family to accommodate the daughters of the deceased.

10. The 1st administrator insisted that the 2nd administrator/protestor had benefitted from parcel No. Karingani/Mariani/3760 and exhibited an official search of the said property as a proof that he benefitted from a gift *intervivos* from the deceased. He has justified his proposed mode stating that he has proposed to give each son an equal share in the estate and that Erastus Mbungu Muchuru is not getting any share in Ndagani because he had already got his share from the deceased before the deceased died.

11. Erastus Riungu (PW2) testified and concurred with the sentiments of the 1st administrator. He stated he is not claiming any share in the estate because he had already benefitted from a previous gift from the deceased herein. He confirmed that all the brothers got an equal share in Mariani during the lifetime of the deceased and that the protestor had sold off 1 acre from his share at Mariani.

12. The protestor on his part testified that he was not aware that he had been given parcel No. Mariani/3760 or my share and that he was glad to get a share in Mariani but staked his claim on parcel No. Karingani/NDagani/3751 claiming that the deceased had given him that parcel and that the 1st administrator hid the title to frustrate his late father's effort to transfer the parcel to him. He expressed no opposition to the distribution of Karingani/Mariani/320 as proposed by the 1st administrator.

13. This court has considered the sentiments expressed by both the 1st administrator and the protestor herein regarding the mode of distribution suggested by the 1st administrator. It is not disputed that the deceased herein bequeathed his son with the following properties during his lifetime;

i. Karingani/Mariani/3604 - Ndiga Riungu Njeru

ii. Karingani/Mariani/3605 - Fredrick Nyaga Muchuru

iii. Karingani/Mariani/317 - Erastus Mbungu Riungu

iv. Karingani/Mariani/3859 - Jeremano Mbuba

v. Karingani/Mariani/3860 - Atanasio Mutegi

vi. Karingani/Mariani/3760 - John Micheni Riungu

14. It is instructive to note that the protestor does not expressly deny the fact that he was bequeathed parcel No.3760 as clearly indicated by the certificate of official search tendered by the 1st administrator. He only in my view faked ignorance but the fact is clear. All the sons of the deceased herein were given approximately 2 acres each in Mariani by their late father- deceased herein. The evidence of Erastus Mbungu Riungu, the oldest son of the deceased testified in this court and looking at his age (80 years) , I could tell that he was speaking with confidence indicative of the fact that he was saying the truth particularly given the fact that he clearly indicated that he was not claiming any share from the estate despite being offered a share by the protestor. This court finds that the all the sons of the deceased received a share of the estate during the lifetime of the deceased and such gifts are normally taken into account when distributing the net estate of a deceased person as provided under **Section 42 of Law of Succession Act** in order to achieve equity to all the children.

15. Going by the evidence on record, the following sons got the following shares.

(i) John Micheni Riungu (parcel No.3760) - 0.69 acres

The first administrator and Erastus Mbungu testified that he sold one acre but they did not lay any evidence before me to show that the 1st administrator sold part of what he was given.

(ii) Ndiga Riungu Njeru (Parcel No.3604) - 2.22 acres

(iii) Jeremano Mbuba (3859) - 0.91 acres

(iv) Fredrick Nyaga Muchuru (3605) - 2 acres

(v) Atanasio Mutegi (3860) - 2 acres

16. The court also finds that it is not in dispute that the daughters of the deceased Josphine Cianjoka and Idah Maruta did not get a share. Since Idah Maruta is reported to be deceased, the only daughter entitled to a share is Cianjoka Muchuru and I note from the consent letter filed that she is agreeable to the proposed mode of distribution made by the 1st administrator. She will therefore get one acre proposed to be given to her since the protestor is comfortable with that proposal. I am also inclined to allow the proposal given to the grand sons though

there was no evidence that they were taken care of by the deceased immediately prior to his demise. This is because all the family members have agreed that they get a share in parcel No. Mariani/320 and since they are the sons of the deceased and each represented by their respective sons I find the proposed fair and in order to promote family cohesion this court will go by that agreed arrangements given the evidence on record and the provisions of **Section 42 of Law of Succession Act**. This court hereby confirms that the grant issued on 27th November 2017 as per the following mode of distribution:-

(A) L.R. Karingani/Mariani/320

- i. Josphine Cianjoka - 1 acre
- ii. Albert Gitari Mbungu
- iii. Mwiti Nyaga
- iv. James Kirimi Mbuba
- v. Nicholas Murithi Ndiga to share jointly the 1 acre
- vi. Christopher Mwiti Micheni
- vii. Kathure Atanasio Mutegi

(B) L.R. Karingani/Ndagani/3751

- i. John Micheni Riungu - 0.7 acres
- ii. Jeremano Mbuba - 0.5 acres
- iii. Atanasio Mutegi Muchuru - 0.2 acres
- iv. Ndiga Riungu Muchuru - 0.2 acres
- v. Fredrick Nyaga Muchuru - 0.2 acres

I shall make no order as to costs. Each to pay own costs.

Dated, signed and delivered at Chuka this day of 1st July 2019.

R.K. LIMO

JUDGE

1/7/2019

Judgment dated, signed and delivered in the open court in presence of Murithi for protestor and Kijaru holding brief for Mugo for Petitioner/Administrator.

R.K. LIMO

JUDGE

1/7/2019