



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

SUCCESSION CAUSE NO. 14 OF 2014

IN THE MATTER OF THE ESTATE OF IBRAHIM M'MBIJIWE

M'MUNYUA alias MBIJIWE S/O MUNYUA- DECEASED

PATRICK KIRIGA M'MBIJIWE.....PETITIONER

VERSUS

GEOFFREY M. K. MUGAMBI.....OBJECTOR

J U D G M E N T

1. **Ibrahim M'Mbijiwe M'Munyua** ("the deceased") died on 18th July, 1994. **Patrick Kirigia M'Mbijiwe** ("the petitioner") petitioned for grant of letters of administration which was granted on 18th July 1994. He thereafter applied for confirmation of the grant on 30th September, 2014.
2. **Geoffrey M. K. Mugambi** ("the objector") lodged an objection to the mode of distribution on 13th March, 2015 on the grounds that the deceased was his father. That **LR. No. Abogeta/U-Chure/319** had been attached over a debt which he paid to redeem the same. That he was therefore entitled to inherit the same while the petitioner was entitled to shares in respect of **LR. Nos. Abogeta/U-Chure/327 and 1587**.
3. The matter proceeded by way of *viva voce* evidence. **PW1 GEOFFREY M. K. MUGAMBI** told the court that the deceased had 4 children; **Evangeline Nkirote Magambo, Geoffrey N. K Muambi, Gladys Muthoni Manene** and **Patrick R. Kirigia Mbijiwe**. That the deceased had left behind **LR. Nos. Abogeta/U-Chure/319 (10 Acres), Abogeta/U-Chure/327 (2 Acres) and Abogeta/U-Chure/1587 (3 Acres)**, respectively.
4. He recalled that sometimes in 1968 when working at the Youth Centre in Nkubu, he learnt that the deceased's said properties had been put up for auction for non-payment of survey fees amounting to Kshs. 2,447/-. That he repaid this amount by through salary deductions of KShs.165/- per month for 15 years. That he educated the petitioner and took care of the deceased and his wife until their demise.
5. For the foregoing reasons, he was entitled to a bigger share than the petitioner. He proposed to give one **George M'Irimi M'Iraja** ½ an acre because that was the wish of the deceased.
6. The affidavit of **SILAS MURUNGI M'NDEGWAS** filed on 21st June 2018 was admitted by consent without him being called for cross-examination. He told the court that when he went to a Njuri Ncheke meeting, he found out that there had been a debt paid by the objector in respect of the deceased's properties.
7. **RW1 EVANGELINE NKIROTE MAGAMBO**, a daughter of the deceased, told the court that she and her sister, **Gladys Muthoni Manene** had no interest in the estate. That the deceased had shared his properties equally between his two sons.
8. **RW2 PATRICK KIRIGIA M'MBIJIWE**, the petitioner, told the court that he and the objector live on **LR. No. Abogeta/U-Chure/319**. That he and his children occupies one side and the objector the other side of that property. Some of their children occupy the other two parcels. That before his demise, the deceased had told them to share his properties equally.
9. I have carefully considered the evidence on record. The only issue for determination is how the estate should be distributed.
10. Both the daughters of the deceased appeared in court and renounced their claim in the estate. They told the court that the deceased had expressly barred them from staking any claim on his properties because they were married. That his wish was that his properties be shared

equally between his two sons.

11. The objector's claim was that he used his own money to pay a debt that had threatened the disposition of the deceased's properties in 1968. That because he saved the properties from being auctioned and having educated the petitioner and taken care of his parents, he was entitled to a bigger share in the estate. He claimed that if the estate is to be distributed equally, he should be paid a sum of KShs.22 million. His contention was supported by **PW2**.

12. **Section 107** of the evidence Act, **Cap 80** laws of Kenya requires an allegor to prove any allegation made by him. I note that the objector did not produce any evidence to prove that the three properties of the deceased or any of them had any debt. There was no evidence to show that they were at any danger of being auctioned in 1968 as alleged or at any time. Mere allegations are not enough sufficient to prove a fact. If the public auction had been advertised at the Nkubu Law Courts as alleged by the objector, there was definitely documentary evidence to that effect. That evidence was not produced.

13. As if that was not enough, the objector did not call any witness who was aware of the alleged debt and the threat of public auction. He did not call **Joseph Ruria, Josephat Njiru** and **Tiras Mirit**, who allegedly knew about the alleged debt, the threatened auction and the repayment of the debt, to testify. Neither did he give reason for their no show.

14. Instead he called **PW2** whose testimony was worthless. He only stated that he had heard about the alleged debt at a Njuri Ncheke meeting. He never stated when and where the meeting was held; who disclosed the alleged debt and whether it was established that the said debt actually existed and was paid as alleged. He never produced any minutes of the alleged meeting to show who attended the same and the deliberations, if any. His testimony was at best worthless hearsay.

15. Be that as it may, even if there had been such a debt and that the objector had paid the same, that would not give him any right greater than the other beneficiaries to the estate. That would have been a debt owed by the deceased and recoverable from him or his estate if the same had not yet been caught up by the statute of limitation. Surely, if the debt was allegedly paid for 15 years from 1968, it became statute barred six years after 1983, that is, 1989. Any time thereafter, it was unrecoverable.

16. The other reason why the objector wanted a bigger share was because he allegedly educated the petitioner and took care of the deceased and his wife until they died. The petitioner disputed this fact. This being an African set up, it is expected that the elder brothers would take care of their younger siblings and their parents in old age. That does not give them the right to demand a bigger share of inheritance.

17. The objector told the court that he is a Christian and took oath by the bible. He should be reminded of the 4th Commandment which decrees that people should honor their parents in order to get long life (Deutronomy 5:16) He may have also forgotten the rebuke contained in Mark 7:9-13 for neglecting parents. To that end, his having taken care of the deceased and his mother does not elevate his right above those of other beneficiaries.

18. To my mind, there was nothing that was produced to warrant this court depart from the dictates of the law as provided for in **section 38 of the Law of Succession Act, Cap 160 of the Laws of Kenya**. That section provides: -

“38. Where an intestate has left a surviving child or children but no spouse, the next intestate estate shall, subject to the provisions of sections 41 and 42, devolve upon the surviving child, if there be only one, or be equally divided among the surviving children.”

19. Bearing in mind that the two daughters of the deceased renounced their interest in the estate, the estate of the deceased is to be distributed equally between the two sons of the deceased, the objector and the petitioner.

20. Accordingly, I find that the mode of distribution proposed by the petitioner is in line with the provisions of **section 38** aforesaid and I adopt it. Consequently, the estate of the deceased is to be distributed as follows: -

a) Abogeta/U-Chure/319 – Equally between Geoffrey M.K. Mugambi and Patrick Kiriga M'Mbijiwe

b) Abogeta/U-Chure/327- Equally between Geoffrey M.K. Mugambi and Patrick Kiriga M'Mbijiwe

c) Abogeta/U-Chure/1587 - Equally between Geoffrey M.K. Mugambi and Patrick Kiriga M'Mbijiwe

21. This being a family matter, I will make no order as to costs.

DATED and DELIVERED at Meru this 19th day of September, 2019.

A. MABEYA

JUDGE