



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

SUCCESSION CAUSE NO. 236 OF 2015

IN THE MATTER OF THE ESTATE OF CHARLES M'MUNGANIA – ALIAS CHARLES MUNGANIA -DECEASED.

BAARIU M'IMANA M'MUGAMBI.....PETITIONER

VS

ABEL KIRAMUNYA M'MUNGANIA.....OBJECTOR

RULING

The deceased herein died on 29th September 2012 aged 80 years old. According to letter dated 25th March 2015 written by Assistant Chief of Ruongo Sub-location he was survived by one wife Ruth Kanja and 12 children, 6 daughters and 6 sons.

The District Land Adjudication and Settlement officer for Igembe District by a letter dated 14.4.2015 confirmed that land parcel No. 273 was recorded in the name of the deceased Charles Mungania. Grant of Letters of Administration was made to Baariu M'Imana M'Mugambi on 9th July 2015 who was authorised to take Letters of Administration Incitation Cause No. 290 of 2013 on 12th March 2015 when the wife of the deceased Ruth Kanja failed to do so when Baariu M'Imana M'Mugambi filed summons for confirmation dated 11th February 2016 and proposed mode of Distribution in affidavits sworn on 11.2.2016 giving himself 1.40 acres which he allegedly bought from the deceased. Abel Kiramunya M'Mungania filed affidavit of protest worn on 23rd June 2018 in which he averred that the Petitioner was not son of the deceased. He averred that his step mother Ruth Kanja had by a letter dated 10th April 2013 – AKM1- told the Land Adjudication Officer that the deceased didn't sell land to the petitioner and that her about turn to support his proposal was fraudulent. The protester gave his proposal how the estate should be distributed and left out the petitioner/Purchaser.

Protester said the beneficiaries are already settled in their respective portions. He contended that the Petitioner had not tendered any evidence to prove he purchased land from the deceased and is therefore not a creditor to the estate of the deceased but is only colluding with his step –mother to wrongly get a lions share of the estate. He averred further that the petitioner is a liar because he claims he is a purchaser and at the same time son of the deceased.

The Protester also said the proposal by Petitioner is not fair and just and there is no criteria in the mode of distribution and there is no explanation why land is to be held in trust for other beneficiaries same of whom have died.

In response to the protest the Petitioner in Further Supporting Affidavit sworn on 18th July 2019 produced land sale Agreement BMS dated 1st March 2012 in which he claimed he bought 1.40 acres from the deceased to be excised from Parcel No. Antubetwe Kiongo Adjudication Section No. 273. He also annexed BM2, a letter which he claimed was written by the deceased on how he had shared out Parcel No. 273. The said letter is however not dated. The Petitioner Counsel proposed that the court determines the application for confirmation based on affidavits on record.

The Petitioner cited Ruth Kanja as a creditor to the estate of the deceased. His interest was in parcel No. 273 Antubetwe Kiongo Adjudication section in which he claimed to have purchased 1.40 acres of land. However in his proposed mode of distribution he went ahead and also allocated himself 0.20 acres from parcel 4676.

The Petitioner didn't also deny or admit that other than the 2 parcels mentioned in his affidavit the deceased had other assets registered in his name as indicated in the affidavit of the protester. The consent by the petitioner is alleged to have been thumb printed by Ruth Kanja.

There are 3 minor. There are 2 beneficiaries whose initials are cancelled. The other 3 beneficiaries have initials and names written in full.

The protesters proposal has equally not been consented to and the court has not been given any criteria used to arrive at the proposed mode of distribution by the protester. The view of this court is that the petitioner's entitlement can only be ascertained through viva voce evidence.

Ruling in distributing is therefore deferred to enable court take evidence of the protester, petitioner and Ruth Kanja as well as the advocate

who attested to the agreement to establish the claim. Further the beneficiaries should also attend and confirm they are agreeable with either what the petitioner has proposed in so far as parcel no. 273 is concerned and also whether they are agreeable with the proposal of the Protester in respect to the other assets listed by him in the affidavit.

HON A. ONG'INJO

JUDGE

RULING DELIVERED, DATED AND SIGNED IN COURT ON 17TH DAY OF OCTOBER 2019.

In the presence of :

C/A: Kinoti

MS Mbogo & Muriuki Advocates

Ms Mbijiwe Advocate holding brief for Mr Muriuki for Petitioner

Protester – Present in person.

Mention 21.11.2019 for directions.

HON A. ONG'INJO

JUDGE