



REPUBLIC OF KENYA

IN THE HIGH COURT AT NAIROBI

(FAMILY DIVISION)

SUCCESSION CAUSE NO 1903 OF 2015

IN THE MATTER OF THE ESTATE OF SILAS MUIGAI GICHOMBO (DECEASED)

JAMES MITHIA GICHOMBO.....1ST OBJECTOR

GEORGE GICHOMBO MUIGAI.....2ND OBJECTOR

AND

LUCIA MUTHONI SILAS.....APPLICANT

JUDGMENT

1. The deceased Silas Muigai Gichombo (deceased) died on the 10th of March, 2001.
2. He was survived by the following persons:
 - a) Lucia Muthoni Silas – wife
 - b) George Gichombo Muigai - son
 - c) Monica Wangui Muigai – daughter
 - d) Joseph Kuria Muigai – son
 - e) Dennis Thuo Muigai – son
 - f) Susan Ndani Muturi – daughter
 - g) Mary Waruguru Muigai – daughter
 - h) Stella Mahi Muigai – daughter
 - i) Agnes Njeri Muigai – daughter (now represented by her daughter Tabitha Nyambura Njeri)
 - j) Hellen Wanjiku Muigai – daughter (now represented by her son Kennedy Muigai).
3. The initial grant was obtained in Kiambu S.P.M.C.C Cause No. 190 of 2007. The grant therein was later revoked and the matter transferred to this court.
4. The initial administrators were Lucia Muthoni Silas (widow) and daughter Agnes Njeri Muigai. Agnes died and was replaced by George Gichombo Muigai.
5. The application for confirmation of grant was filed in this Court on the 15th of August, 2016 wherein the widow proposed mode of distribution that was acceptable to all but 3 of her sons namely;

a) George Gichombo Muigai (2nd Objector)

b) James Mithia Muigai (1st Objector) and

c) Dennis Thuo Muigai

6. The 2nd Objector filed an affidavit of protest on the 8th of September 2016 and was later at the hearing of the said protest to request that the matter be referred mediation by elders. The request was granted.

7. A meeting of the elders was called on or about 8th of November 2011. The elders affirmed the distribution as proposed by the widow. All beneficiaries signed a consent but by turn of events the 1st and 2nd Objector disowned the consents appended to the minutes of the elders. And the 1st Objector thereafter filed his objection on the 5th of December, 2016.

8. The widow proposed distribution as follows:

a) L.R. No. Gatamaiyu/Kagwe/193

Lucia Muthoni Silas - 3.1 acres

Kennedy Muigai Wanjiku - 3.0 acres

Dennis Thuo Muigai - 3.0 acres

b) L.R. No. Gatamaiyu/Kagwe/139

Monica Wangui Muigai - 4.0 acres

Joseph Kuria Muigai - 4.95 acres

Dennis Thuo Muigai - 2.0 acres

c) L.R. No. Gatamaiyu/Kagwe/142

Tabith Nyambura Njeri -2.70 acres

d) L.R. No. Gatamaiyu/Kagwe/369

George Gichimbo Muigai – 4.50 acres

e) L.R. No. Gatamaiyu/Kagwe/135

George Gichombo Muigai -1.80 acres

f) L.R. No. Gatamaiyu/Kagwe/T.39

George Gichombo Muigai – whole

g) L.R. No. Gatamaiyu/Kagwe/T.125

Tabitha Nyambura Njeri – whole

h) L.R. No. Gatamaiyu/Kagwe/T.18

Dennis Thuo Muigai – whole

i) L.R. No. Gatamaiyu/Kagwe/79

Dennis Thuo Muigai – whole

j) L.R. No. Gatamaiyu/Kagwe/T.126

Kennedy Muigai – whole

k) L.R. No. Gatamaiyu/Kagwe/T.98

Kennedy Muigai – whole

l) L.R. No. Gatamaiyu/Kagwe/T.215/32

Monica Wangui Muigai -

Joseph Kuria Muigai – equal shares

SHARES IN:

- i. Mboi Kamiti Farmers Co. Ltd - 2 shares)
- ii. Mataara Tea Factory - 1059 shares)
- iii. Brooke Bond Kenya Ltd - 143 shares) Lucia Muthoni Silas
- iv. Kenya Commercial Bank Ltd – 2660 shares)
- v. Unilever Tea Kenya Ltd - 286 shares)
- vi. ICDC Investment Ltd - 100 shares)
- vii. Centum Investment Co. Ltd - 3030 shares)

9. In his protest George Gichomba Muigai stated that distribution was done in consultation with only 3 beneficiaries. Tabitha Nyambura Njeri, Kennedy Muigai Wanjiku and Stella Wahu Muigai to the exclusion of all others. The other protestors were in agreement with him.

10. On his part James Muthia Muigai protested because he had been left out of the distribution list, further he claimed that at the elder's meeting he was allocated 2 properties that were his own. He wanted property **Gatamaiyu/Kagwe/T.215/35** (Petrol station) given to him alone. Though the other Objectors wanted the petrol station to be shared equally among all beneficiaries.

11. Both in her pleadings and testimony the widow maintained that she distributed the properties in accordance with her late husband's wish having taken into consideration what the deceased had gifted *inter vivos*.

As regards the petrol station in evidence she urged that the same should go to her.

12. Having considered the pleadings, evidence and submissions by the respective counsels and parties I have formed the opinion that the only issues for determination are:

i) Whether the 1st Objector James Muthia Gichombo has been disinherited entirely from the estate of the deceased and

ii) Who should inherit L.R. Gatamaiyu/Kagwe/T.215/32.

13. From the evidence on record and submissions by respective counsels including the 1st Objector who appeared in person, parties do appear satisfied with widow's proposed list on distribution save that her three sons, **James Muthia Gichombo, George Gichombo Muigai and Dennis Thuo Muigai** are unhappy with her proposals of how the petrol station is to be gifted. The 1st Objector wants it to himself since his mother failed to include him in the distribution of other properties and the 2nd and 3rd Objectors propose to have the same shared equally amongst all beneficiaries.

14. The position of the administrator and all other beneficiaries is that the 1st Objector was gifted by the deceased during his life time and he should therefore not expect to get more at distribution. This the first Objector has disputed.

15. **Section 42 of the Law of Succession Act** does recognise that one may gift his property during his life time. This type of gift from one person to another often referred to as gift *inter vivos* may be way of a deed, an instrument in writing, by delivery, by way of dedication of trust by the donor or by way of a revolving trust or presumption of see **Succession Cause No. 153 of 2014 (Kericho) and Succession Cause No. 122 of 2010.**

16. In my view the determination as to whether the deceased gifted the 1st Objector *inter vivos* considered with **Section 35 of the Law of Succession** will determine the pending issue of the petrol station. Section 42 of the Law of Succession states

“where –

(a) an intestate has, during his lifetime or by will, paid, given or settled any property to or for the benefit of a child, grandchild or house; or;

(b) property has been appointed or awarded to any child or grandchild under the provisions of section 26 or section 35,

That property shall be taken into account in determine the share of the net estate finally accruing to the child or house”

17. As earlier observed the 1st Objector was left out of the distribution list proposed by the widow for that reason he had been gifted *inter vivos*, the elders proposal gave him three properties.

18. His co beneficiaries claim that he was gifted *intervivos* the following properties namely;

Kambi ya moto/Menengai 2 properties Naivasha/Mwichiringiri and

That he took Kshs.5.4 million from the Petrol station. (which he acknowledges)

The 1st Respondent also admits Kambi/moto Menengai initially belonged to the deceased but maintains that he bought the same from his father hence the property was not gifted. He however failed to adduce evidence in support.

19. With the evidence on record I find the widow’s proposed distribution which is accepted by all the beneficiaries save for the proposal on the petrol station to be fair and reasonable.

20. The Petrol station was said to be worth Kshs 4.5 million in 2017 and leased out to an oil multinational company for Kshs.5.4 million a year.

In order to be fair to all beneficiaries and taking into account that beneficiaries Have taken possession of their properties I will adopt the distribution of the widow save for the following:

i) L.R. Gatamaiyu/Kagwe/193 measuring approx 3.1 will go to widow for her life time and thereafter it will revert to Joseph Kuria Muigai.

ii) L.R. No. Gatamaiyu/Kagwe/T 215/32 (Petrol Station) will be held by the widow in trust for herself all the 6 beneficiaries named in equal shares, proceeds from the property be shared equally between the beneficiaries.

Dated and Delivered in Nairobi on this 17TH day of OCTOBER, 2019.

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ALI-ARONI

JUDGE