



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KERUGOYA

SUCCESSION CAUSE NO.435 OF 2015

IN THE MATTER OF THE ESTATE OF JOSEPH NJUKI KITHUMA

Alias NJUKI KITHUMA.....DECEASED

SOPHIA WAIRIMU CHOMBA.....APPLICANT

VERSUS

MIANO NJUKI KITHUMA.....PROTESTOR

JUDGEMENT

This matter relates to the estate of JOSEPH NJUKI KITHUMA alias NJUKI KITHUMA deceased.

Grant of Letters of Administration intestate was issued jointly to SOPHIA WAIRIMU CHOMBA and MIANO NJUKI KITHUMA on 19.6.2017. What is now pending is distribution of the deceased estate.

1ST PETITIONER

In her affidavit in support of summons for confirmation of grant, she stated that the deceased was survived by the following dependants;

- a) JAMES MIANO NJUKI - SON
- b) ZAKAYO NYAMU NJUKI - SON
- c) CYRUS MUCHIRA NJUKI - SON
- d) AGNES MABUTI NDEGE - DAUGHTER
- e) STELLA WAMBUI KAGANA – DAUGHTER
- f) GRACE MUTHONI NJUKI - DAUGHTER
- g) NAFTARY KARANJA NJUKI - SON
- h) JAMES MIANO NJUKI - SON
- i) SOPHIA WAIRIMU CHOMBA - DAUGHTER

She proposed that the deceased's estate L.R. NO.KABARE/KIRITINE/1499 be shared equally among the following;

- a) AGNES MABUTI NDEGE
- b) STELLA WAMBUI KAGANE
- c) GRACE MUTHONI NJUKI

d) SOPHIA WAIRIMU CHOMBA

In her evidence she indicated that the deceased had left 1 acre of his estate to the daughters. That he had given each wife and her sons 3 acres as per the two houses. However, the said one acre, land parcel No.KABARE/KIRITINE/1499 is in the name of the deceased and forms his estate in this proceedings.

2ND PETITIONER

He protested the mode of distribution and proposed that the estate be distributed as follows. He filed an affidavit of protest sworn on 9.8.2017.

KABARE/KIRITINE/1499 (half acre jointly).

a) JAMES MIANO NJUKI - SON

b) ZAKAYO NYAMU NJUKI - SON

KABARE/KIRITINE/1499 (half an acre jointly)

a) CYRUS MUCHIRA NJUKI - SON

b) AGNES MABUTI NDEGE - DAUGHTER

c) STELLA WAMBUI KAGANE - DAUGHTER

d) GRACE MUTHONI NJUKI - DAUGHTER

e) NAFTARY KARANJA NJUKI - SON

f) JAMES MIANO NJUKI - SON

g) SOPHIA WAIRIMU CHOMBA - DAUGHTER

In his evidence he indicated that the estate should be shared between the two houses. That the deceased sub divided the land into two way back in 2003 before he died. He had called the Chief, Assistant Chief and Surveyor whereby beacons were put. He showed each family where to settle but the died before the title deed were issued.

The issue which arises for determination is the distribution of the estate. There is no dispute that the deceased was polygamous and had married two wives. The 1st Petitioner Sofia Wairimu is from the second house while Miano Njuki is from the 1st house.

The only property in dispute is land parcel No.KABARE/KIRITINE/1499 measuring one acre.

The distribution of the estate of a deceased who was polygamous is governed under Section 40 of the Law of Succession Act Cap. 160 Laws of Kenya. It is provided:

Where intestate was polygamous

(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.

The deceased was survived by his children as his two wives are deceased. The High Court and the Court of Appeal has held that the distribution of the estate of a deceased who was polygamous must be as provided under Section 40 of the Act. Indeed the section is couched in mandatory terms and the court has to enforce the law as it is to ensure equitable distribution of the estate and especially where the beneficiaries are children.

In the case of ***FRANCIS MWANGI THIONG'O & 4 OTHERS VS. JOSEPH MWANGI THIONG'O [2015] eKLR*** the Court of Appeal in allowing the appeal stated;

Section 40 (1) aforesaid states that it is any wife surviving the deceased that would be considered as an additional unit in the number of children.

That ground of appeal therefore succeeds as the Judge should have found that the first house had four units and the second, comprising the respondents, had five units. The land should therefore have been sub divided in the first instance along the ratio of 4:5

The deceased herein had two houses as follows;

JOSEPH NJUKI KITHUMA - DECEASED	
WANGUNGU NJUKI – WIDOW (DECEASED)	BEATRICE NJOKI – WIDOW (DECEASED)
JAMES M MIANO NJUKI	CYRUS MUCHIRA NJUKI
ZAKAYO NYAMU NJUKI	AGNES MABUTI NDEGE
CICILY MUTHONI (DECEASED)	STELLA WAMBUI KAGANE
	GRACE MUTHONI NJUKI
	NAFTARY KARANJA NJUKI
	JAMES MIANO NJUKI
	SOPHIA WAIRIMU CHOMBA

No evidence was adduced by both the petitioners to prove their claims and therefore the estate should be divided equally among the units. In this case, the deceased first house has 2 units while the second house has 7 units therefore, the deceased estate should be distributed equally among the 9 units.

IN CONCLUSION

I order that the estate of the deceased comprised in land parcel No.KABARE/KIRITINE/1499 shall be distributed equally among;

1. JAMES MIANO NJUKI
2. ZAKAYO NYAMU NJUKI
3. CYRUS MUCHIRA NJUKI
4. AGNES MABUTI NDEGE
5. STELLA WAMBUI KAGANE
6. GRACE MUTHONI NJUKI
7. NAFTALLY KARANJA NJUKI
8. JAMES MIANO NJUKI
9. SOPHIA WAIRIMU CHOMBA

The grant shall be confirmed.

I make no orders as to costs, each party shall bear its own costs.

Dated at Kerugoya this 13th day of November 2019

L.W. GITARI

JUDGE