



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MERU
SUCCESSION CAUSE NO. 112 OF 2006

IN THE MATTER OF THE ESTATE OF M'IMUNYA M'EREA DECEASED
LUNGE M'IMUNYA.....PETITIONER

VS

JOSPHAT KUBAI.....RESPONDENT

RULING

On 27th day of February 2014 the court issued grant in the joint names of the petitioner and the objector Lunge M'Imunya and Josephat Kubai respectively. The court ordered that parties file mode of distribution.

On 25th day of May 2017 the court confirmed that parties had filed respective modes of distribution and cause was referred to Registry for a date before the court to fix a date for the ruling. Lunge M'Imunya proposed in affidavit sworn on 4th August 2014 that he gets a large share as he is eldest son and that he had given his 2 brothers land elsewhere in Kiriinya and they should each surrender to him 0.10 acre each to enable him have 0.20 acres more. He also proposed that the deceased daughters get 0.20 acres to share equally.

Josephat Kubai M'Imunya in his affidavit sworn on 19th June 2014 listed the names of the beneficiaries – children to the deceased and was in agreement with his Co-Administrator that the daughters get 0.20 acres jointly to share equally and that the balance to be shared equally among the sons. He does not explain why L.R. No. Ithima/Ntunene/720 has an area of 5.7 acres. Although Josephat Kubai has averred at Paragraph 5 that his sisters told him they were not consulted in earlier distribution and did not desire to have share of estate ascribed to them in the earlier confirmed grant, there is no evidence of this claim.

None of the deceased daughters have sworn affidavits to confirm they challenge earlier distribution of the estate by Lunge M'Imunya, Kanuu M'Imunya thumb- printed the consent to distribution and confirmation dated 14th May 2007 similarly Sabina Asha M'Imunya, Paulina Karamburi Kanocia M'Imunya and Nthuku M'Imunya are shown to have put their thumbprint to the consent. Josephat Kubai did sign the consent. Which of the 2 modes of distribution is in accordance with the constitution and the Law of Succession Act?

Beneficiaries ordered to attend court during ruling. The initial mode of distribution Lunge Proposed by M'Imunya was that

Josephat Kubai gets – 1.00 acres.

Nthuku M'Imunya gets 1.00 acre

Kanocia Imunya gets 0.35 acres

Karamburi M'Imunya gets 0.35 acres

Asha M'Imunya gets 0.35 acres

Kancuu M'Imunya gets 0.35 acres

Douglas Mungathia gets 0.50 acres

Where Lunge M'Imunya gets 2.00 acres.

It is not explained why Josephat Kubai and Lunge M'Imunya now want to reduce the daughters shares from 0.35 each which was agreed on as per affidavit sworn on 14th May 2007 to only 0.20 acres to be shared by all the daughters. Lunge M'Imunya's claim that he should get the lion's share because he is the eldest son is not consistent with the constitutional provision under Article 10 (2) (b) of human dignity equity social justice inclusiveness, equality human rights, non discrimination and protection of the marginalised.

Furthermore, Article 27(1) provides that every person is equal before the law and has the right to equal protection and equal benefit of the law. Article 23(3) speaks specifically to the situation herein that women and men have the right to equal treatment including the right to equal opportunities in political, economic, cultural and social spheres. If the deceased persons daughters had agreed to have 0.35 acres each which is less than what the sons would have then it would be a violation and infringement of their constitutional right to reduce the share without their consent. In the circumstances this court hereby orders that 1.40 acres shall be shared equally amongst the daughters i.e. 0.35 acres each whereas the balance/remainder to be shared amongst the sons getting one acre each and Lunge M'Imunya getting the larger share of 1.30 acres.

No orders as to costs.

HON. A.ONG'INJO

JUDGE

RULING, DELIVERED, DATED AND SIGNED IN COURT ON

10TH Day of MAY 2018.

In presence of:

Petitioner: M/s B.G. Kariuki Advocate – No appearance

Respondent: M/s Maitai Rimita Advocate – No appearance

Notice of Ruling to issue to advocates and parties by the DR

HON. A.ONG'INJO

JUDGE