



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

SUCCESSION CAUSE NO. 501 OF 2013

In the Matter of the Estate of Kiragara Bagiri (Deceased)

HENRY MUTHAMIA RINTAUGU.....PETITIONER

VERSUS

GRACE KAGWIRIA.....OBJECTOR

JUDGMENT

[1] On 17th of May, 2017, the court appointed Grace Kagwiria and Henry Muthamia Rintangu as joint administrators of the estate of Kiragara Bagiri. The court also directed the Petitioner to file a Summons for Confirmation of Grant. He obliged and filed a Summons dated 24th October 2017. The Petitioner proposed distribution of the estate to be in accordance with paragraph 4 of his affidavit in support of the Summons for Confirmation Grant, as follows:

L.R. ABOTHUGUCHI/GITHONGO/459 (5.29 ACRES)

- 1. Henry Muthamia Rintangu 1.15 Acres**
- 2. Gikunda Kiragara 1.15 Acres**
- 3. Phineas Muriuki Florida Mpinda 1.15 Acres jointly in their own names and in the names of Doreen Mwendwa minors as holding in trust Catherine Makena**
- 4. Julius Ndubi 0.6 Acres**
- 5. Judith Kagwiria 0.6 Acres**
- 6. Margaret Nkirote 0.6 Acres**

L.R. ABOTHUGUCHI/GITHONGO/416 (4 Acres)

- 1. Japhet Mburugu Ringera 0.6 Acres**
- 2. Lucy Gakii 0.6 Acres**
- 3. Joyce Nduru 0.6 Acres**
- 4. Hellen Karimi 0.6 Acres**
- 5. Susan Naitore 0.6 Acres**
- 6. Grace Kagwiria**
- 7. Mwenda Muriuki 0.6. Acres jointly**

8. Kendi Muriuki

[2] Grace Kagwiria (hereafter the Protestor) was directed to file an affidavit on distribution. She filed an Affidavit of Protest in which she contended inter alia that:-

- a. The deceased had subdivided his parcel of land prior to his demise;
- b. Some of the beneficiaries had already sold their parcels of land and were now only after her parcel of land with an intention of disposing it.

[3] The protestor therefore proposed distribution of the estate to be as follows:

L.R ABOTHUGUCHI/GITHONGO/459 (5.29 Acres)

- 1 Margaret M' Mutungi.....1.1 Acres**
- 2 Gikunda Kiragara.....1.1 Acres**
- 3 Henry Muthamia Kiragara.....1.1 Acres**
- 4 Charles Muthamia Kiragara.....1.1 Acres**
- 5 Phineas Kimathi.....1.1 Acres**

L.R ABOTHUGUCHI/GITHONGO/416 (4 Acres)

- 1 Japheth Mburugu Ringera.....1.5 Acres**
- 2 Grace Kagwiria Muriuki.....1.5 Acres**
- 3 Joyce Nduru.....1 Acre**

[4] In a supplementary affidavit sworn on 30th January 2018, the Petitioner contended inter alia that there was no iota of evidence in the affidavit of the Protestor that the deceased had ever subdivided the estate before his demise or made any will. No will has been produced. He further deposed that being son to the deceased, he was in a better position to know of the deceased's wishes in respect of his estate and that he would confirm for a fact that the deceased herein died intestate and that none of the beneficiaries had ever sold any part of the deceased's estate. The objector has made wild allegations only meant to portray the other beneficiaries in bad light.

[5] The Petitioner submitted that the Protestor's contention in her affidavit of protest that her proposal on distribution was guided by the deceased's will and desire on how his estate should be inherited was not true. He also stated that her proposal denied many other beneficiaries who were part of the estate namely; Julius Ndubi, Judith Kagwiria, Margaret Nkirote, Lucy Gakii, Hellen Karimi and Susan Naitore. He submitted that the Petitioner's mode of distribution was all inclusive as had not denied any beneficiary including the Objector who had been provided for to hold jointly with her children. He averred that the Protestor had not disputed the list of beneficiaries

Analysis and determination

[6] I have considered the respective modes of distribution as proposed by the parties. These proceedings relate to the estate of Kigara Bagiri (deceased). The estate comprise in:

- 1. L.R ABOTHUGUCHI/GITHONGO/459 (5.29 Acres); and**
- 2. L.R ABOTHUGUCHI/GITHONGO/416 (4 Acres)**

According to the Protestor, the deceased had 5 children including one M' Mutungi Kiragara (deceased) who was survived by his wife Margaret M' Mutungi. The Petitioner herein is a son of the deceased while the Protestor is a widow to the grandson of the deceased. The gist of the Protestor's Protest is that the deceased had subdivided his parcels of land prior to his demise and that some of the beneficiaries had sold off their parcels of land; who now are only after her land with an intention of disposing it.

[7] Except making general allegations, no evidence, documentary or otherwise was produced by the Protestor to support her claim that the deceased had subdivided his land prior to his demise. The Protestor did not state the specific parcels of land arising from the alleged subdivision by the deceased. She did not also provide details of the particular beneficiaries who received land and the exact proportion. The contention that Land Parcel No. Abothuguchi/Githongo/ 416 had been left to one Jadiel M' Ringera who later gave part of his portion to his two sons were similarly at large and unsupported by any evidence. The Protestor did not even identify the two sons or call them as witnesses. Likewise the allegation that some beneficiaries had disposed of their parcels of land were bare; the Protestor did no state who these beneficiaries were and the specific portions of land allegedly disposed of. I dismiss the protest, find and hold that the deceased died intestate. I will so proceed.

[8] Now I must identify the rightful beneficiaries of this estate and distribute the estate to them. The Protestor did not dispute the list of beneficiaries set out in paragraph 2 of the affidavit sworn on 24th October 2017 by the Petitioner in support of Summons for Confirmation of Grant, save for adding that the deceased was survived by 5 children including M'Mutungi Kiragara (now deceased) but who was survived by his wife Margaret M'Mutungi. The Protestor appeared to suggest that the said Margaret M'Mutungi had been left out and had not been provided for. Although the Petitioner did not respond to this allegation, the said Margaret M'Mutungi was not called as a witness by the Protestor; she has also not made any claim on the estate. I have taken care to check the record on beneficiaries. The letter by the chief dated 24th December 2012 has listed 13 beneficiaries which included the widow, Tabitha Wanja Kiragara. Form P & A 5, the Affidavit in support of the Petition has listed 8 beneficiaries which included the widow of the deceased. Notably, in these two documents the late M'Mutungi Kiragara is not mentioned anywhere as a son of the deceased. In the absence of such claim from her, I will not consider her as a beneficiary of the estate of the deceased. None of the daughters of the deceased staked claim to the estate. As I must only act on claims before court, and with much trepidation, I will proceed on the basis that none of the daughters of the deceased have a claim in the estate.

[9] Before I proceed, I need to dispel on significant contention at paragraph 7 of the Protestor's further replying affidavit that her interest was primarily on Land Parcel No. Abothuguchi/Githongo/416. She however did not state the kind of her interest on the land. I also revoked the grant herein and ordered this property to revert to the deceased.

Rightful beneficiaries

[10] One thing is satisfying; the list of beneficiaries of the deceased estate particularly of the children of the deceased as set out in paragraph 2 of the affidavit in support of Summons for Confirmation of Grant has not been disputed. I therefore find and hold that the children of the deceased entitled to inherit are:-

1. Henry Muthamia Rintangu
2. Gikunda Kiragara
3. Julius Murithi (deceased); and
4. Jediel M'Ringera (deceased)

[11] Subject to the law, court will make appropriate provision to the beneficiaries. See Section 27 of the Law of Succession Act which provides as follows:

“Discretion of court in making order

In making provision for dependant the court shall have complete discretion to order a specific share of the estate to be given to the dependant, or to make such other provision for him by way of periodical payments or a lump sum, and to impose such conditions as it thinks fit.

[12] The court will also be guided by the principle of equality enshrined in section 38 of the law of Succession Act. I will not forget also that the widows and children of the deceased beneficiaries will also take in equal shares under the principle of representation. Applying the law I direct that the estate property listed in paragraph 6 above shall be shared equally amongst the following:

1. Henry Muthamia Rintangu
2. Gikunda Kiragara
3. Julius Murithi (deceased) - to be shared equally amongst his widow and children. These are:
 - i. Catherine Mekena – widow**
 - ii. Phineas Muriuki – son**
 - iii. Florida Mpinda – daughter**
4. Jediel M'Ringera (deceased) - to be shared equally amongst his widow and children. These are:
 - i. Joyce Nduru – widow**
 - ii. Julius Ndubi – son**
 - iii. Judith Kagwiria – daughter**
 - iv. Margaret Nkirote – daughter**
 - v. Japhet Mburugu Ringera – son**

vi. Lucy Gakii – daughter

vii. Hellen Karimi – daughter

viii. Susan Naitore – daughter

ix. Joseph Muriuki M'Ringera – son and also deceased and survived by:

Ø Grace Kagwiria – widow

Ø Mwenda Muriuki – son

Ø Kendi Muriuki - daughter

[13] The grant made on 17th of May, 2017 to Grace Kagwiria and Henry Muthamia Rintangu is confirmed in the terms set out in paragraph 12 above. I hope this will bring to an end the squabbles I have seen in these proceedings. This being a succession matter there will be no order as to costs. It is so ordered.

Dated, signed and delivered in open court at Meru this 9th day of May, 2018

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F. GIKONYO

JUDGE

In the presence of:

Mr. E. Kimathi advocate for petitioner

Protestor in person.

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F. GIKONYO

JUDGE