



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

SUCCESSION CAUSE NO. 267 OF 2000

IN THE MATTER OF THE ESTATE OF NGARUNYI MWINJA (DECEASED)

MURIUNGI NGARUNI.....PETITIONER

-VS-

RUGURU NGARUNI

DOROTHY NAITO NGARUNI

JUDITH KANYUA M'NGARUNI

HELLEN MIRIKO M'NGARUNI

CATHERINE NDURU M'NGARUNI.....OBJECTORS

RULING

1. This succession cause relates to the estate of **Ngarunyi Mwinja (“deceased”)** who died on 30th June, 1994. The deceased left behind a widow **Ruguru Ngaruni** and the following children; **Nkirote Ngaruni, Ntubuka Ngaruni, Muriungi Ngaruni, Kagicha Ngaruni, Mucece Ngaruni,**

Kinanu Ngaruni, Catherine Nduru, Dorothy Naito, Hellen Miriko and Judith Kanyua. The deceased also left behind **Land Parcel No. Nkuene/U-Mikumbune/600** measuring about 3.03 ha as the only property forming his estate.

2. On 23rd November, 2000, Muriungi M'Ngaruni petitioned for letters of administration of the estate of the deceased. On 5th January, 2001, **Ruguru Ngaruni, Dorothy Naito Ngaruni, Judith Kanyua M'Ngaruni, Hellen Miriko M'Ngaruni and Catherine Nduru M'Ngaruni (“the objectors”)** filed an objection to the issuance of the grant on the ground that the 2nd house of the deceased had been left out of the Succession Cause.

3. On 10th September, 2001, the 1st objector was appointed as co-administrator with the petitioner. On 22nd July, 2002, the parties recorded a consent whereby the estate was distributed as follows:-

- a) Ruguru Ngaruni - 1 acre
- b) Muriungi M'Ngaruni - 2 ½ acres
- c) Stephen Gagicha - 2 ½ acres
- d) James Silas Murithi - 1 acre

A certificate of confirmation was issued accordingly.

4. In a turn of events and strange as it was, on 22nd July, 2002, the objectors applied to set aside the said consent for reasons, inter alia, that the matter was irregularly mentioned on the date the consent was recorded. That consent was set aside on 30th October, 2013.

5. Pursuant thereto, on 29th September 2014, the petitioner applied for the confirmation of the grant. He proposed to distribute the estate as follows:-

Land Parcel No. Nkuene/U-Mikumbene/600

- a) Muriungi Ngaruni - 2 ½ acres
- b) Stephen Kagicha Ngaruni - 2 ½ acres
- c) Ruguru Ngaruni and
Dorothy Naito Ngaruni - 1 acre jointly
- d) James Murithi Silas - 1 acre.

6. On 3rd October, 2017, the court gave directions, inter alia, that the party opposed to the proposed distribution do file and serve his/her own mode of distribution or a Protest within 30 days. The parties were also allowed to file and serve affidavit evidence within 30 days of service of the protest. A reminder to comply there with was made on 16th January, 2018. However, none of the parties filed any protest.

7. On 9th April, 2018, the objector filed witness statements of Kiruki M’Ngaruni and Julius Kirimi Rutere. Also filed were a copy of the green card and a topographical survey of the estate property. When the matter came up for hearing on 9th April 2018, the said documents were struck out since the objectors had not complied with the orders of 3rd October 2017.

8. It was contended by Mrs. Kithaka for the petitioner that the reason why distribution was not in terms of **section 38 and 40 of the Law of Succession Act** was because there was a meeting of clan elders of the deceased which agreed how the estate should be distributed. That the distribution was in accordance with the Meru Customs.

9. On the other hand, Mr. Kioga for the objectors submitted that there was no evidence of Meru customs and that one of the daughters’ (Naito) was not married and that she lived on the estate property. Two of the deceased’s daughters were in court during the hearing, Dorothy Naito and Judith Kanyua, who stated that they wanted a share of deceased’s estate.

10. I have carefully considered the entire record and the submissions of Counsel. It is indeed not in dispute that the deceased was survived by a widow and 10 children. According to the proposed mode of distribution by the petitioner, he has only provided for the deceased’s widow (Ruguru Ngaruni) and Dorothy Naito. The rest of the daughters namely; Nkirote Ngaruni, Ntibuka Ngaruni, Mucece Ngaruni, Kinanu Ngaruni, Catherine Nduru, Judith Kanyua and Hellen Miriko have not been provided for.

11. In the case of **MARY WANGARI KIHKA V JOHN GICHUHI KINUTHIA & 2 OTHERS 2015 eKLR** the court held:-

“This Court has found it necessary to emphasize an important point that is related to the above point; that all children of the deceased, including the daughters who are married, are entitled to inherit. One of the grounds on which the Respondents relied on in seeking to dismiss the Applicant’s summons for revocation of the grant was that the Applicant and her sisters were married and it was the deceased’s will to have the suit property only distributed to his sons and unmarried daughters. It is therefore useful to clarify the fact that Section 29 of the Law of Succession Act Cap 160 does not discriminate beneficiaries on any grounds, be it gender or marital status. On the contrary, it defines dependants as including the children of the deceased without any adverse distinction. This position is well established in our legal system and has consistently been restated in our jurisprudence. In the case of Eliseus Mbura M’Thara v Harriet Ciambaka and Another [2012] eKLR, Lesiit J stated that:

The Law of Succession Act does not discriminate between gender in matters of succession or inheritance. Under the Law of Succession Act and indeed under the Constitution a child is a child and every person has equal rights under the law irrespective of gender. The Law of Succession Act does not discriminate between married or unmarried daughters but gives them equal rights to inheritance as the other children (sons) of a deceased person”.

12. In the instant case, the list of beneficiaries as listed by the petitioner in paragraph 2 of his affidavit in support to the summons for confirmation of grant is not in dispute. Save for Dorothy Naito, all the other daughters of the deceased have not been provided for. There is also no evidence that they have renounced their rights/ interests. The deceased was survived by a widow and 10 children.

13. **Section 40 of the Law of Succession Act CAP 160 of the Laws of Kenya** makes provision on how the intestate estate of a polygamous deceased should be distributed. It insists on equality if not equity on all the children and wives who survive the deceased. In the present case, the deceased was polygamous. It would seem that as at the time the matter came up for confirmation, the beneficiaries who were alive were; **Ntibuka Ngaruni, Muriungi Ngaruni, Stephen Kagicha, Naito Ngaruni, Judith Kanyua, Hellen Kanyua and Catherine Nduru.**

14. According to Mrs. Kithaka for the petitioner, the reason why the estate was not being distributed in accordance with **section 40 of the Act** was because the clan and the family had agreed that the daughters do share only one acre given to the mother. Further, that according to the Meru customs, married daughters do not inherit land of their fathers.

15. The answer to that is that there was no evidence that the daughters had agreed to the alleged “clan and family agreement”. Those who attended court demanded for a share of the estate. Further, Meru customs cannot supersede the provisions of the statute to wit, section 40 of the Law of Successions Act.

16. Accordingly, in the absence of any evidence to the contrary, the estate will be distributed in terms of **section 40 of the Act** that is, equally to the beneficiaries as follows:-

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- a) Ntibuka Ngaruni -0.432 ha
- b) Muriungi Ngaruni -0.432 ha
- c) Stephen Kagicha -0.432 ha
- d) Naito Ngaruni -0.432 ha
- e) Judith Kanyua -0.432 ha
- f) Hellen Kanyua, -0.432 ha
- g) Catherine Nduru -0.432 ha

17. This being a succession matter there will be no order as to costs.

DATED and DELIVERED at Meru this 7th day of June, 2018.

A. MABEYA

JUDGE