



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT EMBU

SUCCESSION CAUSES NO. 215 OF 2013

IN THE MATTER OF THE ESTATE OF MARINGA NJIRU (DECEASED)

DUNCAN MAINA MARINGA.....PROTESTER

V E R S U S

SARAH NYOKABI JULIUS1ST PETITIONER

MARY MUTHONI NDEGWA.....2ND PETITIONER

J U D G M E N T

1. The deceased in this case died intestate on 14/01/2012 leaving behind four parcels of land namely:-

- a. Mbeti/Kiamuringa/1842 - 1.20 ha.
- b. Mbeti/Kiamuringa/1840 - 1.405 ha.
- c. Mbeti/Kiamuringa/1843 - 1.405 ha.
- d. Mbeti/Kiamuringa/1844 - 1.405 ha.

2. The 3 administrators who are the son and two daughters of the deceased were issued with letters of administration intestate on 11/10/2013. Thereafter, the daughters of the deceased Sarah Nyokabi Julius and Mary Muthoni Ndegwa filed an application for confirmation of grant date 4/04/2014 proposing the following mode of distribution:-

(a) L.R. No. Mbeti/Kiamuringa/1840 – To be shared as follows:-

- (i) Duncan Maina Maringa - 1 acre
- (ii) Mary Muthoni Ndegwa - 1 acre
- (iii) Sarah Nyokabi Julius - 1 acre

(b) L.R. No. Mbeti/Kiamuringa/1842

Duncan Maina Maringa - 1 acre

(c) L.R. No. Mbeti/Kiamuringa/1843

Sarah Nyokabi Julius - 1 acre

(d) L.R. No. Mbeti/Kiamuringa/1844

Mary Muthoni Ndegwa - 1 acre

3. The protester disagreed with the mode of distribution preferred by the respondents and filed this protest. He proposes that the land L.R. Mbeti/Kiamuringa/1842 measuring 0.405 (3 acres) should go to his son Jonathan Ngari Maina as a wedding gift by the deceased. He also claims for himself three acres and that his sisters co-administrators should get one (1) acre each. He gives the reason that they are married and have land elsewhere. The protester attached minutes of a meeting allegedly held on 26/03/2008 attended by three people referred to as elders.
4. The protester testified that his son Jonathan celebrated his wedding in 2008 and that the deceased announced during the wedding that he had given L.R. Mbeti/Kiamuringa/ 1842 to him as his wedding gift. The three clan elders met on 26/03/2013 and minuted how the land of the deceased would be distributed. The protester says he was not present but he was given the minutes. He said he resides on L.R. 1840 and should remain on that land.
5. The applicants also testified and said that the respondent was not telling the court the truth because the deceased never gave his grandson land as a wedding gift or at all. The evidence given by the applicants was that their father died intestate.
6. The deceased during his lifetime had sub-divided his original land into several parcels and given the protester ten acres which he sold. L.R. No. 1840 is occupied by the first wife of the protester because the protester resides in Meru with his second wife. The petitioner has already sold one acre out of L.R. 1840 and squandered the proceeds. The protester has already benefited from the land of the deceased in the earlier allotment to the disadvantage of the petitioners who are coming in to find only limited assets.
7. It was the petitioners testimony that their mode of distribution is fair to all the beneficiaries. The protester in cross-examination admitted that he has alienated one acre out of L.R. 1840 and given it to his children during the pendency of this succession cause.
8. The deceased is survived by three children who are the parties in this case. The protester did not call any witness or produce any document to show that the deceased gave L.R. 1842 to his son as a wedding gift. The minutes of the meeting of three clan elders are not authentic. The chairman one John Murage signed the minutes on 3/04/2008 whereas the meeting was held on 26/03/2008. The deceased who is the owner do the land did not sign the said minutes.
9. At the time the deceased who was still alive and was to die four (4) years later did not effect transfer of the parcels of land to the people whose names are indicated in the minutes.
10. The protester produced two sets of minutes of a meeting purportedly held on the same day with the same contents. The second set was not signed. Unlike the first set, it was copied to the applicants/administrators who denied that they ever saw the minutes or were aware of such a meeting of 26/03/2008.
11. I find that the protester has not produced any evidence to show that the deceased bequeathed any land to his son Jonathan Ngari Maina.
12. The law applicable in this case for distribution of the assets of the deceased is Section 38 of the Law of Succession Act.
13. It provides:-

Where an intestate has left a surviving child or children but no spouse, the net intestate estate shall, subject to the provisions of sections 41 and 42, devolve upon the surviving child, if there be only one, or be equally divided among the surviving children.
14. The law is clear that the assets are to be shared equally between the surviving children. The grandchildren have no right to inherit from a deceased person and can only do so to take up the shares of their deceased parents.
15. It was held in the case of **CHRISTINE WANGARI GACHIGI VS ELIZABETH WANJIRA EVANS & 11 OTHERS [2014] eKLR:-**

If a child of the intestate has pre-deceased the intestate then that child's issue alive or **en ventre sa mere** or that date of the intestate's death will take in equal share **per stirpes** contingent on attaining the age of majority. **Per stirpes** means that the issue of a deceased child of the intestate takes between them the share their parents would have taken had the parent been alive at the intestate's death.
16. The said Jonathan Ngari can only inherit from his father the protester at the appropriate time. The respondents are children of the deceased and cannot be disinherited because of a grandson who is not recognized by the law as a beneficiary.
17. The protestor argued that his sisters are married and have land elsewhere. Section 38 does not discriminate between married and unmarried children of the deceased. All children are entitled to inherit in equal shares.
18. In the case of **ZIPPORAH ONZERE VS SAMMY MAVALAH [2008] eKLR**, the deceased was survived by three daughters and a son. The proposal was that the estate be shared equally between the children. The son did not consent to this proposal and he filed a protest. The court heard the protest and ordered that the properties be shared equally between all the four (4) children.
19. The protester was given ten (10) acres of land by the deceased during his lifetime which he sold. Under Section 42 of the Act, assets distributed during the lifetime of the deceased are required to be taken into consideration during distribution. If this was to be done, in this case, the protester would get nothing in the limited assets left by the deceased. Since the daughters are not interested in the application of Section 42, this court will leave it out.
20. I find that the proposal by the applicants/administrators is in compliance with Section 38 of the Act and ought to be adopted.

21. I find no merit in the protest and dismiss it accordingly.

22. The grant issued to the petitioners is hereby confirmed in the following terms.

(a) L.R. No. Mbeti/Kiamuringa/1840 – To be shared as follows:-

(i) Duncan Maina Maringa - 1 acre

(ii) Mary Muthoni Ndegwa - 1 acre

(iii) Sarah Nyokabi Julius - 1 acre

(b) L.R. No. Mbeti/Kiamuringa/1842

Duncan Maina Maringa - 1 acre

(c) L.R. No. Mbeti/Kiamuringa/1843

Sarah Nyokabi Julius - 1 acre

(d) L.R. No. Mbeti/Kiamuringa/1844

Mary Muthoni Ndegwa - 1 acre

23. The certificate of confirmation to issue.

24. It is hereby so ordered.

DELIVERED, DATED AND SIGNED AT EMBU THIS 19TH DAY OF JULY, 2018.

F. MUCHEMI

J U D G E

In the presence of:-

Protester present

both applicants present