



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NANYUKI

SUCCESSION CAUSE NO 16 OF 2015

IN THE MATTER OF THE ESTATE OF MURIUKI WERU MUYA, DECEASED

AND

MARGARET WAMAITHA NDEGWA.....SUBSTITUTED ADMIN/APPLICANT

VERSUS

1. STEPHEN WERU MURIUKI

2. ROSE WANJIKU MAINA.....PROTESTORS

J U D G M E N T

1. The Deceased in this cause, **MURIUKI WERU MURAYA**, died on 13/01/2004. On 07/11/2016 a grant of letter of administration intestate was made to **Mary Nyambura Muriuki** (his widow) and issued on 30/11/2016
2. By summons dated 02/06/2017 the Administrator applied for confirmation of grant. Her proposed distribution appears at paragraph 5 of the supporting affidavit.
3. **Stephen Weru Muriuki** (1st Protestor) and **Rose Wanjiku Maina** (2nd Protestor) filed separate affidavits of protest on 13/07/2017. The 1st Protestor in his affidavit pointed out that two assets were not included in the schedule of the assets of the Deceased's estate. In a subsequent affidavit filed on 14/02/2018 the Administrator agreed and sought inclusion of the assets. At paragraphs 6, 7, 8, 9 and 10 of his affidavit the 1st Protestor gave his counter proposals for distribution. He augmented these proposals by his further affidavit of protest filed on 28.02.2018.
4. As for the 2nd Protestor, she adopted the counter proposals of the 1st Protestor.
5. On 11/07/2017 the Administrator **Mary Nyambura Muriuki** (the Deceased's widow) died. By an order entered on 25/01/2018, **MARGARET WAMAITHA NDEGWA** was substituted as administrator in place of the deceased administrator.
6. On 17/05/2018 the court was informed that all the beneficiaries of the estate are children of the Deceased; that there were no claims of any gifts *inter-vivos* by the Deceased; and that therefore there was nothing to be tried by way of oral evidence. The court therefore directed that the summons for confirmation of grant be disposed by way of submissions, and further that the parties do file and exchange written submissions before 18/06/2018 when the submissions could be highlighted.
7. The Administrator's submissions were filed on 14/06/2018 while those of the Protestors were filed on 18/06/2018 by their respective advocates on record. The learned counsels did not wish to highlight.
8. I have read the supporting affidavits as well as the affidavits of protest. I have also considered the respective submissions of the parties.
9. Initially the Deceased was survived by his wife **Mary Nyambura Muriuki** (the original Administrator), four (4) children and two grandchildren (children of a deceased child). The widow subsequently died. In effect therefore, and for the purposes of this judgment, the Deceased was survived by 4 children (all adults) and two grandchildren (one a minor) as follows:-

(i) Rose Wanjiku Maina

- (ii) Stephen Weru Muriuki
- (iii) Margaret Wamaitha Ndegwa
- (iv) Edith Wanjugu Nyaga
- (v) Milka Wambui Gathoni

W M - Minor

10. It is clear from the 1st Protestor's affidavit of protest that all he wants is equity among the Deceased's children in the distribution of their father's estate. In regard to one parcel of land he has pointed out that some parts of the land are rocky and not suitable for farming, and that the fact ought to be taken into account. In respect to another parcel he has pointed out that he has built a permanent house thereon, and that it is only just that what he gets in the land do fall in that portion.

11. The 1st Protestor has also objected to some 24 acres being allocated to an apparent stranger, **Maiyan Holding Ltd**. The Administrator has not explained in an affidavit who **Maiyan Holdings Ltd** is to the Deceased. There is an allegation in the Administrator's written submissions that the Deceased's widow had sold her share to **Maiyan Holdings Ltd** and used the proceeds of sale for medication but died on 11/07/2018. It has not been demonstrated how the widow's share of the estate could have been 24 acres. Nor is any evidence demonstrated of the alleged sale. Allegations in submissions are not evidence. The indisputable fact is that the widow has since died and is herself survived by 4 adult children and 2 grandchildren (children of a deceased child).

12. For practical purposes (and for the purposes of this judgment) the Deceased was survived by 4 children and 2 grandchildren, one a minor (children of a deceased child). Distribution of the Deceased's estate will therefore be governed by **section 38** of the **Law of Succession Act, Cap 160** which provides -

“38. Where an intestate has left a surviving child or children but no spouse, the net intestate estate shall, subject to the provisions of section 41 and 42, devolve upon the surviving child, if there be only one, or shall be equally divided among the surviving children.”

13. The net intestate estate of the Deceased comprises the following assets:-

- (i) L.R. Nanyuki /Naibor Block 1/14 (Kariunga)
- (ii) L.R. Magutu/Gatei/246
- (iii) Plot No. 193 Mwireri
- (iv) Funds in Account No xxxx-xx-xxxx,
Nyeri District Tea Growers Sacco Limited
(Bank A/C No xxxxxxxxxxxx, Karatina Branch).
- (v) 2004 shares at Kenya Commercial Bank Ltd.
- (vi) 73 shares at Kenya Tea Development Agency Ltd

14. I hereby direct that each of the above assets shall be divided into five (5) equal shares and distributed among the four surviving children of the Deceased, with the fifth share going to the two grandchildren of the Deceased, the same to be in the name of **Milka Wambui Gathoni** who shall hold in trust for herself and the minor **W M** in equal shares. It is so ordered.

15. I also direct that in sharing out **L.R. Nanyuki/Naibor Block 1/14 (Kariunga)** and **L.R. Magutu/Gatei/246**, the surveyor shall endeavour as much as possible to ensure that each beneficiary's share falls in the portion occupied by him or her. It is so ordered.

16. Parties shall bear their own costs of these proceedings.

DATED, SIGNED AND DELIVERED AT NANYUKI IN OPEN COURT THIS 5TH DAY OF JULY 2018

H P G WAWERU

JUDGE