



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

SUCCESSION CAUSE NO. 192 OF 2011

IN THE MATTER OF THE ESTATE OF ELIJAH KIARA M'MURITHI (DECEASED)

AYUB NJOBU ELIJAH M'IKIARA.....PETITIONER

-VS-

IBRAHIM ELIJAH M'IKIAIRA..... INTERESTED PARTY

RULING

1. **ELIJAH KIARA M'MURITHI ("the deceased")** to whom this Succession Cause relate, died on 10th January, 1992. On 18th March, 2010, the Chief of Ruiru Location wrote a letter of introduction wherein he introduced the survivors of the deceased.

2. On 12th April, 2011, Ayub Njobu Elijah M'Kiara petitioned for the letters of administration whereby he set out the following as those who survived the deceased:-

- i. Abraham Elijah** - Son
- ii. Charles Kaburu** - Son
- iii. Muthee Elijah** - Son
- iv. Karambu Elijah** - Daughter (not married)
- v. Ayub Job Elijah** - Son
- vi. Gacheri Abdalaman** - Daughter (married)
- vii. Maimuna Mike** - Daughter (married)

Parcel number **KIIRUA/RUIRI/272** was listed as the only asset of the estate.

3. Grant of letters of administration intestate were issued on 13th July, 2011 to the Petitioner. However, the Interested Party filed summons for revocation of grant on 10th March, 2017 claiming that he was likewise entitled to apply for the same.

4. On 22nd February, 2017, the court was informed of the demise of the Petitioner. By a notice of motion dated 2nd May, 2107, Elizabeth Muthoni Ayub, a daughter of the petitioner sought to be replaced as petitioner. This was opposed by Ibrahim Elijah M'kiara vide a replying affidavit sworn on 15th May, 2017. He stated that the Elizabeth has no priority over the sons of the deceased.

5. On 16th May, 2017, the court ordered that all the interested parties appear before the Chief of Ruiru location who was to write a letter indicating who the beneficiaries of the deceased were. By a Letter dated 25th May, 2018, the Chief of Nchoroiboro Location, from where the deceased hailed and in which the estate property is situate, indicated the following to be the beneficiaries of the estate:-

- a. Abraham M'Muga Elijah - Son
- b. Ayub M'Njogu Elijah - Son (deceased)

- c. M'Tuerandu Elijah - Son
- d. Muthee Elijah - Son (deceased)
- e. Saumu Karambu Elijah - Daughter

6. Thereafter, the court asked the parties to file their mode of distribution. In the Interested Party's mode of distribution dated 23rd October, 2017 he proposed that the estate be distributed as follows since it was what was arrived at after a family meeting held on 11th day of July 2017 and for which he produced minutes:-

Land Parcel No. KIIRUA/RUIRI/272 (14.90 Acres)

- i. Ibrahim Elijah M'Ikiara - 5.65 Acres**
- ii. M'Twerandu Elijah M'Ikiara - 4.75 Acres**
- iii. Muthee Elijah M'Ikiara - 2.50 Acres to**
- iv. Ayub Njobu Elijah Kiara share equally**
- v. Saumu Karambu Elijah - 1.00 Acres**
- vi. Elijah M'Ikiara M'Murithi - 1.00 Acres**

(to go to the remaining daughters)

7. On the other hand, Elizabeth Muthoni Ayub representing the family of the petitioner proposed that the estate of the deceased be shared equally among the 5 identified beneficiaries to the estate of the deceased as identified in the Chief's letter dated 25th May, 2017.

8. I have considered the entire record. The Interested Party did not explain why the clan decided that the estate be distributed in the most unequal manner. Although he produced the minutes of the family and clan meeting held on 11th July 2017, the families of Ayub M'Njogu and Muthee Elijah were not represented. In his proposed distribution those two families are to share 2.5 Acres.

9. The deceased was survived by five children. **Section 38 of the Law of Succession Act** provides that:-

“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 shall be equally divided among the surviving children.”

10. According to the minutes of the family meeting, it was stated that the deceased had two shambas in Tigiji and Ruiru location before demarcation in 1957. There was no evidence that was produced to support this allegation. The court cannot act on mere speculation and rumours. He who alleges must prove. It was for the Interested Party to produce acceptable evidence why he is entitled to nearly half of the estate and the others minute share. This he failed to.

11. The parties were asked to substitute the administrator but they failed to do so. **Section 66 of CAP 160** confers upon the court jurisdiction to appoint an administrator. The daughter of the deceased petitioner seeks to be substituted with her father. However, under the law in order of priority she is not the person to be substituted to administer the estate of the deceased. The deceased's sons are alive and they take priority.

12. Accordingly, I order that the name of the petitioner be substituted with Ibrahim Elijah M'ikiara, the Interested Party, as the administrator of the estate and the estate be distributed equally as follows:-

Land Parcel No. KIIRUA/RUIRI/272 – 14.90 Acres

- i. Ibrahim Elijah M'ikiara -2.98 Acres**
- ii. M'Twerandu Elijah M'ikiara -2.98Acres**
- iii. Estate of Muthee Elijah M'ikiara -2.98Acres**
- iv. Estate of Ayub Njobu Elijah Kiara -2.98 Acres**
- v. Saumu Karambu Elijah -2.98 Acres**

This being a family matter, each party will bear their own costs.

DATED and DELIVERED at Meru this 20th day of September, 2018.

A. MABEYA

JUDGE