



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT CHUKA

SUCCESSION CAUSE NO. 32 OF 2016

IN THE MATTER OF THE ESTATE OF M'NDAKA

MUERA alias M'NDAKA MWERA- DECEASED

DAVID KANGORI MURITH.....1ST PETITIONER

UMOTHO M'NDAKA.....2ND PETITIONER

VERSUS

DOROTHY THIGAA M'NDAKA

CHRISTINE MAKENA MURITHI

JAMES MUTEMBEI M'NDAKA JOINT PROTESTERS

ELIPHAS NJERU MURITHI

REGINA KATHINI MURITHI

JAMES MUTEGI MURITHI

J U D G M E N T

1. This cause relates to the estate of the late **M'NDAKA MUERA alias M'NDAKA MWERA** (deceased) who died on 28th August, 2008 domiciled at Karii Sub-Location Magutuni. The estate in this cause comprises that property known as Mwimbi/C. Magutuni/459. The list of dependants of the deceased as listed in the petition are as follows:-

- a. David Kangori Murithi
- b. Umotho M'Ndaka
- c. Dorothy Thigaa M'Ndaka &
- d. Regina Kathini Murithi.

At the trial however it emerged that the deceased was married to two wives namely:

- (i) Josphine Gathoro (deceased) &
- (ii) Dorothy Ndaka

The children from the 1st house (Josphine Gathoro) were given by Umotho M'Ndaka follows:-

- a. Faith M'Ndaka Mwiti
- b. Beatrice Nkuruni
- c. Pamela Mukwanjiru &
- d. Umotho N'Ndaka

In the 2nd house (Dorothy Thigaa M'Ndaka). The following dependants were listed;

- a. Dorothy Thigaa M'Ndaka
- b. Kawira M'Ndaka
- c. Wanja M'Ndaka
- d. Igoki M'Ndaka
- e. Murugi M'Ndaka
- f. Mutembei James M'Ndaka &
- g. Mutugi M'Ndaka

It is also transpired that David Kangori Murithi is a nephew to the deceased.

2. The Petitioner (Umotho M'Ndaka) and David Kangori Murithi were appointed joint administratrix and administrator respectively of the estate of the deceased herein on 27th September, 2016. In that regard the 1st Petitioner (Umotho N'Ndaka) applied for confirmation of grant vide summons for confirmation of grant dated 4th July, 2017 and proposed to have the estate distributed as follows:-

1. Umotho M'Ndaka - 0.30 acres
2. David Kangori Murithi - 0.9 acres
3. Dorothy Thigaa M'Ndaka - 0.59 acres
4. Regina Kathini Murithi - 0.30 acres

3. Dorothy Thigaa M'Ndaka, Christine Makena Murithi, James Mutembei M'Ndaka, Elphas Njeru Murithi, Regina Kathini Murithi and James Mutegi Murithi filed joint protest to the proposed mode of distribution and proposed that the estate should be distributed as follows:-

1. James Kangori Murithi - 1 acre
2. James Mutembei M'Ndaka - 1 acre

4. At trial, only two protestors turned up and testified in support of their proposed mode. Dorothy Thigaa testified that the deceased had other properties not listed in this cause that when given time to go and get documents to prove the claims she turned up saying that all she could get were plot numbers **344** and **417**. She could not get full details and so this court could not really act on the same. She however insisted that Parcel **No. Mwimbi/C.Magutuni/459** should be distributed equally to David Kangori Murithi - 1 acre and James Mutembei M'Ndaka - 1 acre. She reasoned that the other beneficiaries will benefit from parcel **No. 344**.

5. Umotho M'Ndaka on the other hand testified and shifted from her initial proposal and proposed that the estate comprised in **Mwimbi/C.Magutuni/459** should be divided into two equal parts with each house getting one acre.

6. David Kangori Murithi on his part testified that the deceased had given him one acre where he has been occupying. He further stated that the remaining one acre out of the estate had been irregularly sold by James Mutembei with the blessings of Dorothy Thigaa. He was of the view that because his claim was not contested by any of the dependants he should be given one acre out of the estate.

7. This court has considered the proposals given by the 1st petitioner and the protestors. It is clear from the affidavits filed by both Umotho M'Ndaka and the evidence of Dorothy Thigaa M'Ndaka that the claim by David Kangori Murithi a nephew to the deceased is acknowledged. Infact when he testified in court none of the parties challenged him by way of any cross-examination. That in my view is a clear indication that David Kangori Murithi's claim is unchallenged. He is therefore entitled to the one acre of land he has been occupying from the time the deceased allocated him the same.

8. This court was informed that one acre of the estate had been sold by James Mutembei. Though no evidence was tendered to that effect, any

such sales if at all is a nullity as it contravenes the provisions of **Section 82(b) (i) and (ii)** of the **Law of Succession Act**. The one acre remaining from the estate shall be divided equally between Umoto M'Ndaka and Dorothy Thigaa M'Ndaka.

The estate comprised in Mwimbi/C.Magutuni/459 measuring approximately two acres shall therefore be distributed as follows:-

1. David Kangori Muriithi - 1 acres
2. Umoto M'Ndaka - 0.50 acre
3. Dorothy Thigaa M'Ndaka - 0.50 acre

The grant issued on 27th September, 2018 is hereby confirmed as per the above mode of distribution. I shall not make any order as to costs so each party to bear own costs.

Dated, signed and delivered at Chuka this 1st day of October, 2018.

R. K. LIMO

JUDGE

1/10/2018

Judgment signed, dated and delivered in the open court in the presence of the petitioners in persons and protestors.

R.K. LIMO

JUDGE

1/10/2018