



REPUBLIC OF KENYA

IN THE HIGH COURT KENYA

AT MERU

SUCCESSION CAUSE NO. 541 'B' OF 2013

IN THE MATTER OF THE ESTATE OF THE LATE

JENIFFER WANKUMA M'MURAA - DECEASED

EARNEST GITARI MURAA.....PETITIONER

VS

ROSE GATIMBA KIRIINYA.....OBJECTOR

JUDGEMENT

Earnest Gitari Muraa petitioned for Letters of Administrate to the estate of Jeniffer Wankuma M'Muraa and they were granted to him on 9th January 2014. Application for revocation to the grant was made by Rose Gatimba Kiriinya the sister to the petitioner and daughter to the deceased on 28th April 2015 for reasons that petitioner filed the cause secretly among other grounds on 27.7.2016 the grant made to the petitioner was revoked and another one in the name of Earnest Gitau and Rose Gatimba made jointly.

The objector filed an application for confirmation after the petitioner Ernest Gitau failed to comply. Ernest Gitau filed protest to the application for confirmation and directions were taken that the protest be heard by way of viva voce evidence

When the protester testified, he acknowledged that his mother left a valid will bequeathing her estate but he was left out. He said that we wanted the mothers estate to be shared equally. The protest admitted that in succession cause No. 376 of 2003 in respect of his father's estate he got.

- 0.125 acres out of L.R. Ntima/Igoki/2044
- He got entire parcel No. Ntima/Igoki/1031
- 2 acres from L.R. Nyaki/Giaki/434

He said LR. Ntima/Igoki/7750 where his mother's house stood was as a result of sub division of L.R. 1044 out of which sub-division he also got a portion for himself but he had not moved to his portion. The deceased had even sued him in HCC No. 110 of 2011 seeking that he vacates her portion of land but he didn't appear in court.

The Respondent/Objector Rose Gatimba also testified that in application for confirmation she proposed her mode of distribution as per paragraph 5(a) which she got consent from her siblings except for the protester – Earnest the only son of the deceased.

She said the deceased drew her last will and it was witnessed by Gatari Ringera and Co. Advocates and **Zakayo Mutungi**. She said she followed her mother's last will to distribute the estate. She said that Ernest had been given so many parcels of land and that is why he was not provided for. She said that Ernest is entitled to a share of compensation from NLC. She said that the protester denied them access to their mothers house by breaking and changing doors and locks after her burial. She said the protester had his portion of land behind the deceased persons compound which it appears he has sold.

In submissions the protester argued that the deceased had acquired life interest and not absolute interest over the estate of his father and that the life interest was extinguished upon her death and estate reverts to the children of the deceased husband.

The protester counsel relied on the authorities of:

- **Gideon Karemia Mariga vs Nellie Wanjiku Moffat [2013] eKLR.**
- **Joyce Mwihaki vs Maria Nyokabi Kibunja [2014] eKLR**
- **Re-estate of Josephat Gatia Muchiri (2018) eKLR.**
- **Eunice Mumbi Gathee vs John Kamande Kimani & Another (2012) eKLR**

To support their argument that the deceased person didn't have capacity to distribute property. She was holding as life interest and that their will purported to have been made by her was not valid and that lack of proceedings to challenge the will cannot allow the court to turn a blind eye to substantive issues in question.

The Objector's Counsel submitted that petitioner did not file any proceedings to challenge the validity of the deceased persons will dated 10.1.2012 and when he testified he didn't tender any evidence as to invalidity. The authority of Re-Estate of Murimi Kennedy Njogu – Deceased (2016) eKLR was relied upon. It was also argued in objector's submissions that in Meru H.C. Succession cause No. 376 of 2003, there was no order that the deceased held life interest to the properties distributed to her in the said cause.

It was submitted that the proposed mode of distribution by the objector should be adopted by the court whereas proceeds from NLC of Kshs 1,921,000 and proceeds from rental houses on L.R. Ntima/Igoki/7819 shall be shared. There is an agreement that Kshs. 1,921,000 being compensation for compulsory acquisition of 0.017 Ha out of LR. Ntima/Igoki/7819 by the NLC.

They said L.R. Ntima/Igoki/7819 is also the same one with 5 rental rooms which the beneficiaries have agreed to share rents equally and/or distribute equally amongst the children including protester. It is not therefore true that the petitioner/ Protester herein has been left out of the estate of his deceased mother.

The protester admitted that when his deceased father's estate was being distributed he benefitted more than any of his siblings. He didn't protest when the estate of his father was distributed and he didn't say he wanted to remain in his father/mothers homestead. As a result he got a portion outside his mother's compound. It can't therefore be true that what was given to the deceased when her late husband's estate was being shared in succession cause No. 376 of 2013 was held as life interest of net intestate estate. If that were the case, the estate would not have been distributed. She would have held the entire net intestate estate in trust for the children to share equally upon her demise or remarriage.

The deceased herein had a right under Article 40 to hold property legally/lawfully acquired and one of the means to acquire property is through inheritance. She must have contributed towards the acquisition of the said properties with her husband during their marriage and it would be unfair and unjust to find that a son she sired and found them working hard to acquire the estate taking priority over here merely most likely because of her gender. That would go against the spirit and grain of Article 27 of the constitution which the deceased person having constitutional right to acquire and own property also has the right to dispose it in any manner that pleases them and the protester could not have forced the deceased to bequeath to him her property when she was willing to do so and the protester should be satisfied with what he has got from the deceased and what he acquired as inheritance from the deceased father. In conclusion, the estate of the deceased shall therefore be distributed as per paragraph 5 of the affidavit of Rose Gatimba Kirinya save that the protester shall benefit from compulsory acquisition of 0.017 ha out of L.R. Ntima/Igoki/7819 and also equal portion of the balance of the parcel of land if same can be divided into economical portions or an equal share of the rent from the 5 rooms on the remainder of the said parcel of land. There shall be no orders as to costs.

The deceased having inherited L.R. Ntima/Igoki/7750 the protester should vacate the same and give vacant possession to beneficiaries in paragraph 5(b).

HON. A.ONG'INJO

JUDGE

JUDGMENT DELIVERED, SIGNED AND DATED THIS 18TH DAY OF OCTOBER 2018

HON. A.MABEYA

JUDGE