



REPUBLIC OF KENYA

IN THE HIGH COURT KENYA AT MERU

SUCCESSION CAUSE NO. 391 OF 2009

IN THE MATTER OF THE ESTATE OF THE LATE M'ARIMI M'NKANATA - DECEASED

JANET KINYUA M'ARIMIPETITIONER

VS

FRANCIS KIAMBI.....OBJECTOR

RULING

The deceased herein M'Arimi M'Nkanata died on 12th October 2008 domiciled at Kigane in Meru County. He was survived by the following children.

1. Jeniffer Muthoni
2. Francis Kiambi
3. Raphael Muriuki
4. James Nyamu
5. Kimathi M' Arimi
6. Lucy Gatwiri
7. Joel Mugambi

The deceased was also survived by the widow Janet Kanyua who petitioned for letters of Administration and which were granted on 3rd day of October 2010.

The deceased persons son Francis Kiambi applied for revocation of the temporary grant for reason by an application dated 19th November 2014 for reasons the petitioner had failed to apply for confirmation of grant. He sought that he be appointed as Administrator.

The protester and his witness recorded statements and also testified in court as well as the petitioner who said that L.R. Tigithi/Matanya/Block9 Mukumbune was in the name of Joel Mugambi and not the deceased. Joel in his statement dated 30.6.2017 confirmed his father authorised transfer of land to his name.

1. L.R. No. Nkuene/L.Mukumbune/36 measuring 4.35 acres
2. L.R. No. Igoji/Kinoro/664 measuring 1.9 ha
3. Plot no. 63 B Nkubu town.

The widow to the deceased Janet Kanyua had distributed the estate in her affidavit sworn on 26th May 2016 as follows:

L.R. Nkuene/Mukumbune/36

1. Joel Mugambi – 2 acres

2. James Nyamu – 2 acres

Lucy Gatwiri

3. Janet Kanyua 1.35 acres equally

L.R. Igoji/Kinoo/664

1. Muthomi Japhet – 0.69 acre

2. Francis Kiambi – 2 acres

3. Raphael Muriuki – 2 acres

It has come out from the protest that Joel benefitted inter vivos from deceased persons 3 acres of land in L.R. Tigithi/Matanya Block 9 (Mikumbune)/346 and that the petitioner widow of the deceased didn't list the plot at Nkubu as the deceased persons assets.

In the distribution the name of Kimathi M'Arimi has been left out and there is no explanation given as it is not indicated whether he was alive or not.

The protester said that the said Kimathi died and left a daughter Betty Kawira who had not been provided for. The petitioner did not controvert this fact.

In distributing this estate the court will therefore have to put into consideration that Joel Mugambi benefitted with 3 acres of Land inter vivos and therefore his share in intestate estate cannot be equal to the shares of the other beneficiaries unless and until the rest of the beneficiaries are brought to the same or equitable level with him.

The child of Kimathi Arimi – deceased beneficiary is also entitled to the father's share which should be similar to that provided to the other sons of the deceased i.e 2 acres. In the circumstances Joel Mugambi shall not benefit from L.R. Nkuene/L. Mikumbune /36 for reasons he got a larger share in Tigithi/Matanya/Block 9/346 – measuring 3 acres during the life time of the deceased's 2 acres of L.R. Nkuene/L.Mikumbune/36 will go to Betty Kawira – daughter of Kimathi M'Arimi – deceased beneficiary.

The rest of the distributions in L.R. Nkuene/ L. Mukumbune/36 and L.R. Igoji/Kinoro/664 will remain as proposed by the widow of the deceased.

As for plot No. 63 B- Nkubu – the rents of Kshs 25,000/= as confirmed by the Administrator shall be shared equally amongst the beneficiaries of the deceased after the widow has deducted Kshs 5,000/= per month for her own upkeep.

There shall be no orders as to costs.

HON. A.ONG'INJO

JUDGE

RULING DELIVERED, DATED AND SIGNED IN COURT ON 18TH OCTOBER 2018.

HON. A.MABEYA

JUDGE