



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT CHUKA

SUCCESSION CAUSE NO.20 OF 2017

(FORMERLY NYERI HIGH COURT SUCCESSION CAUSE NO.19 OF 1983)

IN THE MATTER OF THE ESTATE OF ROBERT B. MATE KABIRO (DECEASED)

MADRINE CIAMUTEGI ROBERT.....PETITIONER

VERSUS

JAMES GITONGA ROBERT.....PROTESTOR

J U D G M E N T

1. This cause relates to the estate of the late **ROBERT B. MATE KABIRO** (Deceased) who died on 4th June 1983 at Embu Hospital. He was domiciled at Kabugua Market within Tharaka Nithi County. The deceased left the following dependants surviving him namely:-

- (i) Madrine Ciamutegi Robert- widow
- (ii) James Gitonga Robert
- (iii) Mercy Muthoni Robert
- (iv) Lucy Kanini Robert- (deceased)
- (v) Jediel Nyaga Robert
- (vi) Alex Kithinji Robert
- (vii) Agnes Karimi Robert
- (viii) Rosalid Gatakaa Mati
- (ix) Purity Murugi Robert
- (x) Irene Kagendi Robert
- (xi) Jackson Muriuki Robert

2. The record of proceedings show that the deceased died intestate and his estate comprised the following properties;

- a) L.R. NO. MAGUMONI/THUITA/544- measuring 9.6 acres
- b) L.R. NO. MAGUMONI/THUITA/729- measuring 6 acres

Madrine Ciamutegi Robert was appointed the administratrix of the estate of the deceased herein on 5th April, 1984 and it appears that she used the grant issued in Nyeri High Court to distribute the estate illegally. When this cause was transferred to this court, this court upon noting anomalously revoked the grant and reversed the transactions. In the interest of time and justice, I do not find it useful to go back to the same at this stage. It suffices to note that on 18th December, 2017 upon revocation of grant, a fresh grant was issued jointly to both

Madrine Ciamutegi Robert and James Gitonga Robert as 1st administratrix and 2nd administrator respectively.

3. The 1st administrator has through summons for confirmation of grant dated 18th December, 2017 sought confirmation of grant and proposed to have the estate distributed equally among all the surviving dependants. The 2nd administrator filed a protest suggesting that the estate should be distributed as follows:-

(i) **L.R. MAGUMONI/THUITA/544**

- a) Madrine Ciamutegi Robert - 1.9 acres
- b) James Gitonga Robert - 1.9 acres
- c) Jediel Nyaga Robert - 1.9 acres
- d) Alex Kithinji Robert - 1.9 acres
- e) Jackson Muriuki Robert - 1.9 acres

(ii) **L.R. MAGUMONI/THUITA/729**

- a) Mercy Muthoni Robert - 1 acre
- b) Agnes Karimi Robert - 1 acre
- c) Rosalid Gatakaa Mati - 1 acre
- d) Purity Murugi Robert - 1 acre
- e) Irene Kagendi Robert - 1 acre
- f) Muthomi Nthiga
- g) Mutwiri Nthiga - 1 acre jointly

4. The 1st administratrix during hearing told this court that she is more interested with peace and tranquility in the family and that she was agreeable to her sons getting their respective shares in parcel No. **MAGUMONI/THUITA/544** while her daughters should get their shares in parcel No. **MAGUMONI/THUITA/729**. I have looked at the proposal made by the protestor and that is exactly what he has proposed. I have noted that the protestor's proposal is equitable and meets the spirit of the law as provided under **Section 38** of the **Law of Succession Act**. This court was told that the sons are in occupation of their respective shares in parcel No.544 and that they are contented with the share of 1.6 acres initially given to them by the 1st administratrix. All the daughters of the deceased are said to be married and none turned up in court to stake a claim in the estate. They however did not renounce their rights as provided by law. They are therefore entitled to a share in the estate.

5. In the premises and purely for purposes of promoting peace and harmony in the family of the deceased I will allow the summons for confirmation of grant dated 18th December, 2017. The grant jointly issued to the administratrix and the administrator on 18th December, 2017 is hereby confirmed and the estate of the deceased herein shall be distributed as follows:

(i) **L.R. NO. MAGUMONI/THUITA/544**

- a) Madrine Ciamutegi Robert - 1.90 acres to be held for her own benefit and in trust of;
 - (i) Mercy Muthoni Robert
 - (ii) Agnes Karimi Robert
 - (iii) Rosalid Gatakaa Mati
 - (iv) Purity Murugi Robert and
- (v) Ireen Kagendo Robert
- (b) James Gitonga Robert - 1.90 acres
- (c) Jediel Nyaga Robert - 1.90 acres

(d) Alex Kithinji Robert - 1.90 acres

(e) Jackson Muriuki Robert - 1.90 acres

(ii) **L.R. MAGUMONI/THUITA/729**

(a) Mercy Muthoni Robert - 1 acre

(b) Agnes Karimi Robert - 1 acre

(c) Rosalid Gatakaa Mati - 1 acre

(d) Purity Murugi Robert - 1 acre

(e) Ireen Kagendo Robert - 1 acre

(f) Muthoni Nthiga

Mutwiri Nthiga - 1 acre jointly

This being a family matter I shall make no order as to costs.

Dated, signed and delivered at Chuka this 16th day of October, 2018.

R.K. LIMO

JUDGE

16/10/2018

Judgment signed, dated and delivered in the open court in the presence of parties and Kaari for petitioner and Murithi holding brief for Mugo for applicant.

R.K. LIMO

JUDGE

16/10/2018