



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT CHUKA**

**SUCCESSION CAUSE NO. 54 OF 2016**

**(FORMERLY MERU HIGH COURT SUCC. CAUSE NO.326 OF 2006)**

**IN THE MATTER OF THE ESTATE OF THE LATE GEDION M'MURUNGI M'MUTHARA ALIAS MURUNGI NJARA ALIAS MURUNGI MUTHARA (DECEASED)**

**ASENATH GATAKAA NTWIGA.....ADMINISTRATRIX**

**VERSUS**

**PURITY CIRINDI KAMUNDI.....PROTESTOR**

**J U D G M E N T**

1. This cause relates to the estate of the late Gedion M'Murungi M'Muthare Alias Murungi Njara Alias Murungi Muthara who died on 5<sup>th</sup> June, 1975 at Chogoria Hospital. The deceased left behind the following dependants as per affidavit (P& A5) in support of petition for letters of administration namely:-

- (i) Esther Karia Murungi (widow-deceased)
- (ii) Joses Gedion Riungu M'Murungi
- (iii) Charity Kainda Kamundi
- (iv) Maritha Kagendo Kaugi
- (v) Asenath Gatakaa Ntwiga
- (vi) Samuel Kamundi Gedion- deceased
- (vii) Jane Kaari Gedion

2. The estate in this cause comprises the following properties namely:-

- a. L.R. Mwimbi/Chogoria/258
- b. L.R No. Mwimbi/Kiraro/369

The initial Petitioner, Esther Karia Murungi, was appointed administratrix of the estate in this cause on 23<sup>rd</sup> January, 2007. Upon her demise she was substituted by Asenath Gatakaa Ntwiga who was appointed administratrix on 7<sup>th</sup> March, 2017. The initial administratrix had on 24<sup>th</sup> January, 2008 taken out summons for confirmation of grant dated 23<sup>rd</sup> January, 2008 and had proposed to have the estate distributed as follows:-

**1. L.R. No.Mwimbi/Chogoria/258**

- a. Purity Cirindi Kamundi

- b. Gedion Mwenda Kamundi                      3 acres jointly
- c. Jane Muthoni
- d. Pamela Karende Kamundi
- e. Charles Munene Joses   -    1 acre
- f. Evanson Kabii Joses     -    1 acre
- g. Esther Karia Murungi   -    3 acres

2. **L.R. No. Mwimbi /Kiraro/369**

Asenath Gatakaa Ntwiga- whole

3. The current administratrix Asenath Gatakaa Ntwiga has given the following proposals:-

1. **L.R. No.Mwimbi/Chogoria/258**

- a. Purity Cirindi Kamundi
- b. Gedion Mwenda Kamundi    3 acres jointly
- c. Pamela Karende Kamundi
- d. Jane Muthoni
- e. Charles Munene Joses        -    1 acre
- f. Evanson Kabii Joses         -    1 acre
- g. Charity Kainda Kamundi
- h. Maritha Kagendo Kaugi        2.49 acres
- i. Asenath Gatakaa Ntwiga
- j. Jane Kaari Gedion

2. **L.R. No. Mwimbi/Kiraro/369**

Asenath Gatakaa Ntwiga- whole

4. At the hearing of the protest filed by Purity Cirindi Kamundi, the administratrix told this court that his brother Joses Riungu Gedion had been given a share measuring approximately 8 acres by the deceased during his lifetime. She justified her proposal to give her sons Charles Munene and Evanson Kabii Joses a share of one acre each from the estate on account that the deceased had proposed to give them a share in the estate because their father had apparently declined to take responsibility over the two children. She further told this court that she later married someone else and left the cited children with the deceased herein. It was her further evidence that parcel **No. Mwimbi/Kiraro/369** was a gift to her by her late father (deceased herein) on account of having taken good care of him when he was alive. She faulted the protestor's claim arguing that she was married in 1980 by his late brother Kamundi after the demise of the deceased herein and that she has intimidated her and other beneficiaries with threats of violence if they ventured into parcel **No. Mwimbi/Chogoria/258**.

5. The evidence of the administratrix was supported by Jane Kaari Gedion another daughter to the deceased. She also claimed that, the protestor became violent to her and other beneficiaries after the demise of their mother in 2011 and that she was forced to keep away from the estate for her own safety after she was assaulted and her house torched.

6. Purity Cirindi, the protestor herein, opposed the proposed mode of distribution by the administratrix. Her main bone of contention is that the deceased herein had two sons Joses Riungu and Samuel Kamundi (her late husband) and because he had gifted L.R. Parcel **No. Mwimbi/Chogoria/248** measuring 8 acres to his other son Joses Riungu, parcel **No.Mwimbi/Chogoria/258** was meant for her late husband Samuel Kamundi Gedion and by extension herself and her children. She opined that land parcel **No. Mwimbi/Kiraro/369** measuring around 1.75 acres should go to daughters and grandsons Charles Munene and Evanson Kabii.

7. In her oral evidence in this court the protestor told this court that her late husband was still young and that is why he was not given a parcel of land during the lifetime of the deceased.

8. The protestor was supported in her proposal by Loyford Njeru (DW2) who told this court he was a clan member and that the deceased had confided to him during his lifetime that he wanted to have his estate distributed as per the protestor's proposal. When pressed in cross-examination he told this court that the protestor's proposal was however arrived at clan's meeting in 2004 long after the demise of the deceased and that the clan came to that proposal after the proposal was suggested by the eldest son Joses Riungu.

9. This court has considered both proposals made by the administratrix and the protestor. It is regrettable that this matter dragged for far too long without determination leading to the demise of some of the beneficiaries. However that is now water under the bridge. The issue before this court is the distribution of the estate of the late Gedion M'Murungi M'Muthara alias Murungi Njara alias Murungi Muthara.

10. What is not in dispute is that the estate comprises two properties namely **L.R Mwimbi/Chogoria/258** measuring approximately **3.03 Ha** or **7.5 acres** and **L.R No. Mwimbi Kiraro/369** measuring approximately **0.7. Ha** or **1.75 acres**. What is contested in this cause is who the beneficiaries are and their respective shares.

11. The protestor has objected to the proposed mode of distribution suggested by the administratrix who is one of the daughters to the deceased. The protestor herself has told this court that she is claiming part of the estate (infact larger part) on account of her marriage to the late Samuel Kamundi Gedion who died on 26<sup>th</sup> July, 2004 as per the death certificate on record. The protestor was married to the late Samuel Kamundi on 16<sup>th</sup> August, 1980 as per the marriage certificate on record which means that she was married around five years after the demise of the deceased herein on 5<sup>th</sup> June, 1975. Going strictly by the provisions of **Section 29** of the **Law of Succession Act** she does not qualify on her own right to be considered as a dependant because the law only recognizes children of a deceased person as automatic heirs while other dependants has to establish that they were being maintained by deceased immediately prior to his death. The protestor herein is claiming on behalf of her husband the late Samuel Kamundi whose interest in the estate survived him upon his demise. The protestor however failed to take out letters of administration in respect of her late husband to enable her stand on his shoes in claiming inheritance rights over the estate of the late Gedion M'Murungi M'Muthara (deceased). Her protest herein therefore is technically incompetent but in the spirit of **Article 159 (2)** of the Constitution, this court is minded to entertain the protest and determine it on merit.

12. The protestor's main bone of contention as I have observed above is that since the other son of the deceased Joses Gedion Riungu was given a parcel of land measuring 8 acres by the deceased during his lifetime, it follows that the other son to the late Samuel Kamundi Gedion was to be given 8 acres and since **Mwimbi/Chogoria/258** measures approximately 7.5 acres, the parcel should be handed over to her on behalf of her late husband. The protestor has argued that her late husband was still young and that is why he was not given a gift of land by the deceased herein. This court however finds that this argument is a mere speculation since by the time the deceased died in 1975, the late Samuel Kamundi going by the copy of death certificate on record, was 20 years of age. It cannot be said that he was still a minor at that time. Furthermore, the deceased died when the protestor was not in the picture as she was married in 1980 long after the demise of the deceased. She cannot authoritatively say that she knew the intentions of her late father in law.

13. In the above premises, I find that the protestor's proposal on how the estate should be distributed has no factual or legal basis. The legal basis for distribution of an estate where there is no surviving spouse is provided under **Section 38** of the **Law of Succession Act**. The law provides that in the event of a person dying intestate, his estate should be divided equally among the surviving children.

14. The administratrix on her part has given a proposal which is a bit more equitable as compared to the protestor's suggestion. She justified her sons (Charles Munene Joses and Evanson Kabii Joses) getting a share on account that the deceased took care of them immediately prior to his demise. I have looked at the suggested mode by the widow to the deceased (the late Esther Karia Murungi) and have noted that she too gave a share to the said grandchildren perhaps on that understanding. Jane Kaari Gedion (PW2), who is another daughter to the deceased testified and told this court that the said grandchildren lived with her mother (widow to the deceased) prior to her demise and were chased away by the protestor immediately their grandmother passed on.

I therefore find that on a balance of probability, the two grandchildren Charles Munene Joses and Evanson Kabii Joses are dependants of the deceased herein in terms of **Section 29** of the **Law of Succession Act** and are entitled to a share of the estate.

15. I am also persuaded that Joses Gedion Riungu having benefitted from gift intervivos (parcel of land measuring 8 acres) from the deceased, he is not entitled to a further share in this cause. The administratrix says she had had also been gifted parcel **No. Mwimbi/Kiraro/369** measuring approximately 1.75 acres. She will get that share but in accordance with **Section 42** of **Law of Succession Act** that share is considered a previous benefit and is hereby taken into account in the distribution of the estate herein

16. In the end this court finds that in the interest of justice, the grant issued to the administratrix herein on 7<sup>th</sup> March, 2017 is hereby confirmed in the following terms namely:

(a) **L.R. Mwimbi/Chogoria/258**

1. Purity Cirindi Kamundi to have 3 acres thereof to hold in trust for;

(i) Gedion Mwenda Kamundi

(ii) Pamela Karendi Kamundi &

(iii) Jane Muthoni

2. Charles Munene Joses - 1 acre

3. Evanson Kabii Joses - 1 acre
4. Charity Kainda Kamundi
5. Maritha Kagendo Kaugi To share 2.5 acres jointly
6. Jane Kaari Gedion

(b) **L.R. No. Mwimbi/Kiraro/369**

Asenath Gatakaa Ntwiga - whole

I shall make no order as to costs for now. I also direct that in order to bring this matter to an end, the Deputy Registrar of this court do execute transfer or transmission documents of those beneficiaries who may be reluctant to co-operate. I also direct the District Surveyor to carry out the survey work and the subdivisions as per the certificate of confirmation to be issued and shall, be provided with the security from Chogoria Police Station if need arises.

**Dated, signed and delivered at Chuka this 15<sup>th</sup> day of October, 2018.**

**R.K. LIMO**

**JUDGE**

**15/10/2018**

Judgment dated, signed and delivered in the open court in the presence of Kaaria holding brief for Murithi for the administratrix and Purity Cirindi Kamundi protestor in person.

**R.K. LIMO**

**JUDGE**

**15/10/2018**