



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

SUCCESSION CAUSE NO. 284 OF 2013

IN THE MATTER OF THE ESTATE OF JAPHET M'RINGERA M'IMAITA (DECEASED)

STEPHEN MBAABU RINGERA.....PETITIONER

VS

STANLEY MBAABU RINGERA.....INTERESTED PARTY/OBJECTOR

RULING

The deceased Japhet Ringera Imaita died on 6th June 1995 at Chogoria Mission Hospital following heart failure.

He was according to Chief's letter dated 14th June 2012 from Katheri East Location survived by:-

- a) Joyce Kaburi – Widow
- b) Evangeline Kigetu – widow
- c) Stanley Gitobu – Son
- d) Rufus Kinoti – son
- e) Stephen Mbaabu – son
- f) Lawi Kimathi – Son
- g) Patrick Murithi – Son

The deceased was proprietor of 4 parcels of land namely:-

- 1. Abothuguchi/Katheri/2312
- 2. Abothuguchi/Katheri/2313
- 3. Abothuguchi/Katheri/1561
- 4. Abothuguchi/Katheri/1203

Stephen Mbaabu Ringera was authorised to petition for Letters of Administration to the estate of the deceased. Joyce Kaburi, Evangeline Kigetu, Stanley Gitobu, Rufus Kinoti, Lawi Kimathi and Patrick Murithi consented to the making of Grant of Administration intestate by Stephen Mbaabu. Grant of Letters of Administration was made to Stephen Mbaabu Ringera on 9th July 2015.

By an application dated 4th November 2016 Stanley Gitobu one of the beneficiaries applied for confirmation of grant as an interested party claiming that Stephen Mbaabu had failed to apply for confirmation even after the expiry of statutory period of 6 months. In his supporting affidavit he claimed that the petitioner was reluctant to apply for confirmation and he feared that his intention is to disinherit him and his

family.

He said failure by petitioner to apply for confirmation of grant has caused him to suffer irreparable loss and damages. He proposed distribution of the estate in the schedule annexed to his affidavit. The application was served on the petitioner.

On 6th February 2017 the court directed that the widow, daughters and sons of the deceased hold a discussion in the presence of chief of East Katheri Location and deliberate on how to distribute the estate but the negotiations/discussions were held but the applicant Stanley Gitobu didn't agree with it. Parties were therefore directed to file modes of distribution. The Petitioner adopted mode of distribution in hand written minutes dated 25.2.2017 which Stanley Ringera refused to sign.

Stanley Gitobu filed affidavit of protest and annexed to it minutes of meeting before the District Officer Abothuguchi West Division dated 27th June 2012 in which he complained and after deliberations the sons of the deceased agreed on how to distribute the estate. The minutes are signed and stamped by the District officer Abothuguchi West Division Patrick Mbiyiwe.

According to those minutes L.R. No. Abothuguchi/Katheri/1561 was to be subdivided into 2 equal portions to be shared by

- Stephen Mbaabu ½ equally
- Lawi Kimathi
- Rufus Kinoti ½ equally
- Stanley Gitobu

That a plot measuring 40 X80 and later changed to 38 X120 was to be excised from the above parcel and given to Mrs Lucy Kiremi and that is should face the main road.

That L.R. Abothuguchi/2312 and 2313 was to be owned by Mrs Lucy Kiremi alone. Stanley Gitobu appears to have added that Lucy was to share with her son. That L.R. Abothuguchi/Katheri/1203 was to be shared among the 5 sons equally.

It was also agreed that trees planted by the deceased were to be left to the widow of the deceased whereas those planted by the beneficiaries could be harvested by those who planted respective trees.

Stanley attached a schedule of home L.R. No. Abothuguchi/Katheri/1561 was to be shared amongst the sons i.e

1. Stephen Mbaabu – 1.10 acres
 2. Lawi Kimathi – 1.10 acres
 3. Rufus Kinoti – 1.03 acres
 4. Stanley Gitobu – 1.06 acres
 5. Patrick Murithi Kiremi – 0.11 acres
- 39 X 120 ft.

In affidavit of protest filed by Stanley Gitobu sworn on 3.3.2017 he averred that the chief of the area colluded with the petitioner to distribute the estate in contravention of consent of 27.6.2012 entered into by the parties in the presence of District Officer and that the chiefs action is motivated by malice and cannot be relied upon. He said the deceased wished that Patrick Murithi Kiremi get L.R. Abothuguchi/Katheri/2312 and 2313.

Handwritten minutes of 25th February 2017 were filed in court listing names of members of the family of the deceased present. The meeting was held pursuant to directions of the court that beneficiaries hold discussions and negotiate how to distribute estate. It is shown that minutes were signed by everyone in agreement except Stanley Gitobu Ringera who in affidavit of protest explains that resolutions in the meeting held on 25.2.2017 went against consent made before the D.O. on 27.6.2012.

The meeting held on 25.2.2017 decided that L.R. decided that L.R. Abothuguchi/Katheri/1561 was to be distributed in the same manner as decided in meeting held on 27/6/2012 save that the 2nd half of the land is to be shared equally by Rufus Kinoti, Stanley Gitobu and Japheth Murithi son to Thomas Kiremi who is deceased.

The protester insists that L.R. Abothuguchi/Katheri/2312 and 2313 was willed to Patrick Murithi alone by the deceased but the meeting resolved that he and Rufus Kinoti would share the 2 parcels equally with Patrick Murithi kiremi teh son of Thomas Kirimi.

I do find that the distribution proposed at the meeting with the area Assistant chief on 25th February 2017 is reasonable save that the daughters of the deceased who have not expressly denounced their rights have not been given any shares in the estate.

In the circumstances this court in consideration of the constitutional provision at Article 27(1), (2), (3)(4) and (5) on equally and freedom from discrimination will make an order that the estate of the deceased shall be shared equally amongst the children and widows of the

deceased (if alive) and where a child(ren) is deceased their share shall be held by the Administrator in trust for those children of the deceased, brothers and sister.

In this case it is indicated that the son of the deceased known as Thomas Kiremi is deceased and it is proposed that one of his Japheth Murithi Kirimi takes 1/3 of the 2nd half portion from L.R. 1561. That 1/3 should be held by the Administrator and Japheth Murithi in trust for himself, his mother and his siblings in equal shares.

Patrick Murithi Kiremi is also to get in equal share from L.R. Abothuguchi/Katheri/2312 and 2313.

That share should be held by Patrick Murithi and the Administrator on behalf of the mother, himself and his siblings (sisters and brothers) in equal shares. Concerning allegations by Stanley Gitobu that the deceased left a will that is an allegation that only surfaced at the tail end of the proceedings herein. In an affidavit sworn on 5th June 2017 he annexed a copy of a handwritten document written in vernacular with the date of 28.10.1994. The said document has the name of the deceased at the end and it is not signed or even witnessed. There being no certified translation of the document this court cannot say it is a valid will. It is therefore disregarded.

Costs of the cause shall be borne by each party.

HON. A.ONG'INJO

JUDGE

RULING DELIVERED, DATED AND SIGNED IN COURT ON 11TH OCTOBER 2018.

In the presence of:

C/A: Penina

Ms Munga Advocate holding brief for Kimathi for Petitioner.

Protester – Present in person

HON. A.ONG'INJO

JUDGE

Ms Munga

I pray for a copy of the judgment.

Order

Copy of ruling supplied to counsel and/or parties at their costs.

HON. A.ONG'INJO

JUDGE