



**REPUBLIC OF KENYA**

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

**SUCCESSION CAUSE NO. 222 OF 1993**

**IN THE MATTER OF THE ESTATE OF JEREMIAH MARETE (DECEASED)**

**TABITHA NYEGERA MARETE.....PETITIONER**

**-VS-**

**JULIA KAGURI MARETE.....OBJECTOR**

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

1. **JEREMIAH MARETE (“the deceased”)** died on 18<sup>th</sup> December, 1979. On 4<sup>th</sup> June 2012, the Chief of Katheri Location wrote a letter of introduction in which he introduced the heirs of the estate. The parties herein were introduced as widows of the deceased.

2. On 8<sup>th</sup> October, 1992, **Tabitha Nyegera (“the petitioner”)** petitioned for letters of administration of the estate intestate. She set out the following as the beneficiaries of the deceased:-

- a) Juliah Kaguri
- b) Tabitha Nyegera
- c) Gladys Gaceri (Deceased) Widows
- d) Julius Marete
- e) Isaac Mugambi
- f) Esther Nkirote
- g) Naomi Kajuju
- h) Susan Kathure
- i) Josphine Makena (Deceased)
- j) Jane Makandi
- k) Charity Nyoroka
- l) Ruth Gaiti
- m) Lydia Kathonga
- n) Salome Kaguiria
- o) Beatrice Nkatha

3. She also disclosed Abothuguchi/Katheri/1333 as the only asset forming the estate. On 3<sup>rd</sup> October, 1994, the grant was issued to the

petitioner which was confirmed on 6<sup>th</sup> November, 1995 with the estate being distributed as follows: -

a) ABOTHUGUCHI/KATHERI/1333- 10.40 ACRES

Julia Kaguri- 2 acres  
Julius Marete 2 acres  
Tabitha Nyegera- 2 acres  
Isaak Mugambi Marete- 2 acres  
Esther Nkirote - 1.2 acres  
Isaak Mugambi Marete- 1.2 acres

4. On 4<sup>th</sup> October, 1996, **Julia Kaguri Marete (“the Objector”)** lodged a Summons for the revocation of the grant. She contended that; the Petitioner filed this Cause fraudulently and illegally since she was not the only entitled administrator of the estate of the deceased; that the deceased had other properties which were not disclosed and thus, the grant should be revoked and the estate be re-distributed equally among the other siblings.

5. On 12<sup>th</sup> February, 2002, the objector was appointed a co-administrator with the petitioner. Subsequently, the court ordered that the estate be redistributed by the administrators.

6. On 16<sup>th</sup> September, 2002, the parties consented that the property known as **Abothuguchi/Katheri/1333** be shared equally among the beneficiaries who were identified as the two surviving widows and their children. It was further agreed by consent, that the District Surveyor do subdivide that property equally among the beneficiaries. On a site visit made on 13<sup>th</sup> March, 2003, it was established that the land had already been demarcated on the ground.

7. However, the parties failed to pursue their said consent and proceeded with the trial as there were claims that apart from the said property, there were other properties belonging to the deceased which had not been included in this Cause.

8. At the hearing, OW1 was the objector. She told the court that she was the first wife of the deceased. That the deceased had the following properties:-

- a) 10 Acres at Katheri
- b) 10 Acres at new Katheri
- c) Plot at Kirua market
- d) Plot at Kinjo market (sold by PW1 without
- e) Plot at Narumoru her knowledge)
- f) Plot at Kisima farm- unaware of it situation
- g) A tractor – no knowledge of its whereabouts
- h) Ciakaireri Ranch Shares in Timau from which she never benefited.

9. She admitted in cross-examination that she and the petitioner were both in occupation of **Abothuguchi/Katheri/1333** but she did not know the acreage that each was occupying. That the petitioner came to **Abothuguchi/Katheri/1333** after the deceased had passed on. She also admitted that all the other properties she had enumerated had been disposed off after the demise of the deceased and were unavailable for distribution.

10. **OW2**, Julius Miriti told the court that he was the son to the deceased and the objector. That the deceased died leaving behind four properties:-

- a) Plot at Kinjo market no. 11A
- b) Katheri/1333- 10 acres
- c) Ontulili/Ontulili/ 326- 10 acres

d) Kisima land.

11. He further told the Court that the petitioner sold the Kiirua and Kinjo plots and tractor Reg.No. KPC 328. That she had failed to account for or share the proceeds of the sale. As regards the deceased's shares at Wachakareri Farm, he did not know what happened to them as the petitioner had kept all the documents relating thereto.

12. He testified that it was the intention of the deceased that **Abothuguchi/Katheri/1333** be for the objector and her children; **Ontulili/Ontulili/326** for the petitioner and her children; plot at **Kiirua 17A** was to be rented out to cater for the children's school fees. According to him, the plot at **Kinjo market No. 11A** should have been developed for rent and the land in Kisima be divided equally between the two houses. The land in Noru Moru and the plot at Timau were not available for distribution as he, **OW2** had sold them.

13. He admitted that **Ontulili/Ontulili/326** was registered in the names of Isaac Marete, the son of the petitioner. To him, that land belonged to the deceased. That the Timau farm had been given to the petitioner so that she does not claim anything from **Abothuguchi/Katheri/1333**.

14. **OW3 M'Inoti M'Raiji** told the court that he was the cousin of the deceased. He stated that the deceased had made a will before his demise but he did not know where it was. That the petitioner had moved to Nanyuki before the demise of the deceased and was living there to-date.

15. **OW4 Anna Stella Karwitha**, a daughter in law to the deceased and the wife of **OW2** stated that when the deceased died, he left **Plot no. Katheri/1333** where she lives. That the petitioner did not inform them when filing this cause.

16. In her response, **PW1 Tabitha Nyegera Marete** told the Court that she was the widow of the deceased. That the only available asset of the estate was **Abothuguchi/Katheri/1333** as the rest had been sold. That on being appointed administrator, she distributed the above property. She never touched the other properties as they belonged to Isaac Mugambi and Julius Miriti to whom they had been distributed by the deceased during his lifetime.

17. That before his demise, the deceased had demarcated the land on the ground. Those present during the division of the property included Julius Miriti, some elders now deceased, M'Ringer M'Nthaka (brother to the deceased) and Mwirebua, a neighbor. Her wish was that she and the objector be given their respective portions which they would distribute to their respective daughters. That her deceased co-wife, Gladys had given her portion of the land to Isaac Mugambi and Esther Nkirote since she was living with them at the time of her death.

18. **PW2 Ayub Mwirabua** told the court that he knew the deceased as he was his neighbor. He recalled that sometimes in the year he could not recall, the deceased called him to witness the partition of his land. That the petitioner and the objector were each given a portion on one side of the river and the 3<sup>rd</sup> portion over the river was said to be for the 3<sup>rd</sup> wife, Gladys. That a month after the deceased died, **OW2** and the deceased brother, Nthaka Samson approached him to agree to a fresh redistribution of the property which he declined.

19. I have considered the entire record and the Petitioners' submissions. The **issues for determination are; what are the assets of the estate; who are the beneficiaries of the deceased and how should the estate be distributed.**

20. On the first issue, it was common ground that apart from **Abothuguchi/Katheri/1333**, the deceased had other properties. However, there was no agreement as to the status of those properties. These were:-

a) Plot at Kirua market

b) Plot at Kinjo market

c) Plot at Narumoru

d) Plot at Kisima farm

e) A tractor

f) Ciakaireri Ranch Shares in Timau

21. Although there was no proof that the said properties belonged to the deceased, as no documents of title were produced all the parties were in agreement that the said properties had either been sold or altogether was not there for distribution. The evidence showed that either the deceased had distributed those properties to his two sons during his lifetime or the sons took possession thereof and disposed of them after the deceased's demise. They are no longer there for distribution.

22. Accordingly, I make a finding that the estate of the deceased constitutes **Abothuguchi/Katheri/1333** only.

23. The second issue is to identify who the beneficiaries of the estate are. From the letter of introduction by the area chief date 8<sup>th</sup> April, 1993 and the testimonies of the witnesses, the deceased was survived by the following: -

a) Julia Kaguri

b) Tabitha Kagera Widows

- c) Gladys Gaceri (Deceased)
- d) Julius Marete
- e) Isaac Mugambi
- f) Esther Nkirote
- g) Naomi Kajuju
- h) Susan Kathure
- i) Josphine Makena (Deceased)
- j) Jane Makandi
- k) Charity Nyoroka
- l) Ruth Gaiti
- m) Lydia Kathonga
- n) Salome Kaguiria
- o) Beatrice Nkatha

24. These to my mind are the beneficiaries of the deceased. The last issue is how the estate is to be distributed. While the objector proposed that the available property be wholly distributed to her as the petitioner had been given the property at Nanyuki, the petitioner was of a different view. She proposed that the property be distributed to the two widows for their benefit and the benefit of their respective children.

25. As I have already found, there was no evidence to show that the deceased had divided his properties as alleged by the objector. The record shows that as early as 16<sup>th</sup> September, 2002, the parties had recorded a consent to the effect that **Abothuguchi/Katheri/1333** be shared equally among the beneficiaries who were identified therein as the two widows together with their respective children. That consent order was never varied or set aside.

26. A site visit by the Executive Officer of this court on 13<sup>th</sup> March, 2003 to the ground found that the land was demarcated on the ground. In his report dated 20<sup>th</sup> March, 2003, it was clear that “the two families were living separately on the ground with houses erected thereon”. There was no suggestion that any of the houses had been recently constructed

27. In this case, the deceased died on 18<sup>th</sup> December, 1979 before the commencement of the **Law of Succession Act, Cap 160 Laws of Kenya (“the Act”)** which came into operation on 1<sup>st</sup> July, 1981. **Section 2 of the Act** provides to the effect that the estate of persons dying before the coming into effect of the Act shall be administered or be subject to the customary law to which they were subject.

28. In this regard, the succession of the deceased would be in accordance with the custom that he was subject to, to wit, the Meru custom.

29. **According to Eugene Conran, Restatement of African Law: 2 Kenya II Law of Succession, (Sweet & Maxwell, 1969) at page 35, the estate of a polygamous Meru man was divided equally between the houses. Each house kept that land which was allocated to it during the husband’s lifetime.**

**30. The testimonies of the witnesses was to the effect to the effect that the two widows are in occupation of separate areas of the estate property. The same is demarcated on the ground. The petitioner and her witness told the court that Gladys, the deceased co-wife had left her portion to two of the petitioner’s children. I saw the two witnesses testify. I did not believe them on that aspect. They gave self-serving testimony. She intended that her two children get a share of Gladys thereby make her family acquire a larger portion than that of the objector. I reject that Gladys left any property to anyone. There was no satisfactory evidence to that effect. The said children themselves did not appear to testify before the court.**

31. **Accordingly, the estate of the deceased is to be distributed to the two widows** Tabitha Nyegera Marete and Julia Kaguri Marete equally to hold on their own behalf and on behalf of their respective children in equal shares.

32. **This being a family matter, I will make no orders as to costs.**

It is so decreed.

SIGNED at Meru

A. MABEYA

**JUDGE**

***DATED and DELIVERED at Meru this 11<sup>th</sup> day of October, 2018.***

**A. ONG'INJO**

**JUDGE**

**In the presence of: -**

Mr. Kimaita Adv H/B for Kaumbi for –Objector

Ms. Kiome Adv for Petitioner

**A. ONG'INJO**

**JUDGE**