



**REPUBLIC OF KENYA**

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

**SUCCESSION CAUSE NO. 204 OF 2004**

**IN THE MATTER OF THE ESTATE OF M'MUCHEKE M'MWITARI alias MUCHEKE MWITARI (DECEASED)**

**HARRISON MWIRIGI .....PETITIONER/RESPONDENT**

**-VS-**

**SAMUEL MWORIA ..... OBJECTOR/APPLICANT**

**RULING**

1. **M'MUCHEKE M'MWITARI alias MUCHEKE MWITARI (“the deceased”)** died on 22<sup>nd</sup> June, 1986. On 18<sup>th</sup> June, 2004, the Chief of Chugu Location wrote a letter of introduction wherein he introduced the following as the dependants of the deceased:-

- a) Nkirote M’Mucheke - widow (1<sup>st</sup> wife)
- b) Samuel Ngeera - son
- c) Hellen M’Mucheke - widow (2<sup>nd</sup> wife)
- d) Samuel Mworia - son
- e) Elizabeth Kagwiria - daughter (married)
- f) Zipporah Kairuthi - daughter (married)
- g) Juliah Mwendwa - daughter (married)
- h) Stellah Nthiori - daughter (married)
- i) Harrison Mwirigi Mucheke - son

2. The deceased left a piece of land parcel no. **NYAKI/CHUGU/ 223** as the only asset forming his estate. On 18<sup>th</sup> June, 2004, Harrison Mwirigi Mucheke (**“the Petitioner”**), petitioned for letters of administration of the estate intestate and set out the above listed as the survivors. On 19<sup>th</sup> October, 2004, the grant was issued to him and confirmed on 8<sup>th</sup> July, 2008. The entire estate was distributed to the petitioner.

3. By a Summons dated 6<sup>th</sup> November, 2014, **Samuel Mworia (“the Applicant”)** objected to the said grant and applied for an inhibition against parcel no. **NYAKI/CHUGU/ 223**. The grant was revoked and another grant issued to both the petitioner and applicant as joint administrators on 12<sup>th</sup> June, 2017.

4. It was ordered that the petitioner file an application for confirmation but he failed. The court allowed the applicant to apply for confirmation which he did on 1<sup>st</sup> March, 2013. The court further directed any other interested party or beneficiary to file their protests if any. None filed any protest but the petitioner filed another summons for confirmation dated 25<sup>th</sup> June, 2018 which the court treated as a Protest.

5. On the hearing of the summons, none of the parties attended. I have considered the entire record, the applications for confirmation and the summons considered as the protest. The issues for determination is; **how should the estate be distributed?**

The applicant's proposal is as follows: -

- a) Samuel Mworia - 40 points
- b) Harrison Mwirigi Mucheke - 20 points

7. The petitioner's proposal is as follows: -

- a) Harrison Mwirigi Mucheke- 0.39 Acres
- b) Zipporah Kairuthi-0.21 Acres
- c) Samuel Ngeera- 0.085 Acres
- d) Peter Muteithia- 0.085 Acres
- d) Samuel Mworia- 0.07 Acres

8. The petitioner indicated that the applicant had been given by the deceased 35 acres at Ruiru Rwarera Adjudication Section where he is living with his two wives. I note that the petitioner included in his distribution, one Peter Muteithia without stating who he is or how he is related to the deceased. In this regard, I will disregard him when it comes to distribution.

9. While the applicant excluded everyone else except himself and the petitioner, the petitioner has excluded Elizabeth Kagwiria from his mode of distribution. He has not given any reasons as to why yet she is a daughter of the deceased and she has not renounced her interest in the estate.

10. Under **section 38 of the Law of Succession Act Cap 160, Laws of Kenya**, an estate of a deceased is to be distributed equally to his children where there is no spouse. In the present case, the parties seem to have agreed to the mode of distribution proposed by the petitioner as they signed the consent filed with the Summons except Samuel Mworia.

11. I have noted that Samuel Mworia did not deny that he had been bequeathed 35 acres by the deceased during his lifetime. Under **Section 41 of the Act**, the court is enjoined to take that into consideration.

12. In this regard, the estate will be distributed as follows:-

**NYAKI/CHUGU/223**

- a) Samuel Ngeera
- b) Elizabeth Kagwiria
- c) Zipporah Kairuthi                      Equally
- d) Harrison Mwirigi Mucheke-

13. The above should consider the current occupations for family harmony and integration. Further, the grant issued on 12<sup>th</sup> June, 2017 is hereby confirmed as above.

14. **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**