



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

SUCCESSION CAUSE NO. 82 OF 2007

IN THE MATTER OF THE ESTATE OF M'MUTUNGI KITHAMBA

(DECEASED)

MARY KAIRUTHI NDUBI.....1ST APPLICANT

LYDIA KANANU.....2ND APPLICANT

LUCY MWARANIA.....3RD APPLICANT

CATHERINE KENDI.....4TH APPLICANT

VS

SASINTA KATHURE M'MUTUNGI.....PETITIONER/RESPONDENT

RULING

The deceased Zaverio M'Mutungi Kithamba died intestate on 16th March 2002 domiciled at Kaaga sublocation in Meru County and was survived by:-

- a) Sasinta Kathure – Widow
- b) Fredrick Kimathi - son
- c) Mary Kairuthi Ndubi – daughter
- d) Lydia Kanau – Daughter
- e) Lucy Mwarania – Daughter
- f) Geoffrey Gikundi – Son
- g) Francis Kamai – son
- h) Catherine Kendi – Daughter
- i) Jane Gatimba – Daughter
- j) Zacharia Kiambi – son

The deceased was registered proprietor of the following parcels of land:-

- a) Nyaki/Kithoka/753 -0.80 ha
- b) Ntima/Igoki/1871

c) Nyaki/Mulathankari/482

d) Nyaki/Mulathankari/529 (Zaverio M' Mutungi Kithamba)

e) Ntima/Igoki/2885 (East Africa Pentecostal Churches of Kenya)

Letter dated 7th March 2007 was written by George Koome M'Rukaria Assistant chief of Mulathankari location identifying rightful beneficiaries and the deceased persons properties.

The deceased persons wife was authorised by the other beneficiaries to petition for Letters of Administration and Temporary Grant of Letters of Administration was made on 15th August 2007.

When the widow filed application for confirmation dated 31st October 2008 Geoffrey Gikundi M' Mutungi filed affidavit of protest claiming that petition was filed without his knowledge and consent and that his signature to consent to distribution was forged by the Administrator. He also averred at paragraph 9 that petitioner had left out one property registered in deceased persons name L.R. Kiirua/Nkando/1325. He said that each beneficiary should be allocated his/her share so that they can develop instead of devolving to the widow of the deceased. He urged the court to order of an out of court settlement on distribution. From the list of assets, the Green card for L.R. Ntima/Igoki/2885 is registered in the name of East Africa Pentecostal Churches of Kenya and not in the name of the deceased – annexure SKM 1(b). There is an additional property L.R. Nyaki/Kithoka/2276 which is registered in the deceased persons name Saberio M' Mutungi Kithamba.

L.R. No. Nyaki/Mulathankari/482 is registered in the name of Hellen Kigambi Mugambi and Benard Mugambi Gituru as joint proprietors. L.R. Nyaki / Kithoka / 2276 is registered in the name of Saberio M' Mutungi Kithambi the deceased herein.

L.R. No. Ntima/Igoki/3999 is also registered in the name of Zaverio M' Mutungi Kithamba. Zachary Kiambi's objection to the rectification of certificate of confirmation relates to claims that the Administratrix wanted rectification done to create access roads to serve portions of land created out of subdivision of L.R. Nyaki/Mulathankari/529 which would eat into his portion of the land.

The court encouraged the parties herein to negotiate distribution of the estate and by a meeting held on 25.2.2018 the family members held discussions and agreed as per minutes filed in the court record. The agreement on distribution of L.R. Nyaki/Kitoka/753 is compatible with averments of Fredrick Kimathi in affidavit sworn on 26.2.2018 and 16.11.2017.

The Replying Affidavit of Fredrick Kimathi also confirms that the wishes of his father was that L.R. No. Nyaki/Mulathankari/529 be shared by Francis Kamai, Fredrick Kimathi, Geoffrey Gikundi, Zakary Kiambi and the balance was to go to the mother. The discussions held on 25.2.2018 resolved that those wishes of the deceased be followed. Fredrick wanted that those portions be transferred whether the parcels have access roads or not should be verified by a surveyor. Fredrick also avers that L.R. No. Ntima/Igoki/1871 should be sub divided and share to Geoffrey Gikundi, Francis Kamai, Zachary Kiambi and the mother (Administrator).

The meeting decided that this parcel of land be shared equally amongst the children of the deceased. The meeting discussed that Geoffrey Gikundi having sold his portion in L.R. 1871 should not get any.

For L.R. Ntima/Igoki/3999 – the meeting resolved that the Administrator should get her upkeep from there, but Fredrick Kimathi is of the view that rent should be accounted for and that the parcel should also be subdivided equally.

The dispute that the beneficiary herein have is not on distribution but the fact that the Administrator has not completed administration of the estate. This court therefore orders that the Administrator transfers portions of the estate to respective beneficiaries.

It is also ordered that the Rent from L.R. Ntima/Igoki/3999 should be shared amongst the beneficiaries save that ¼ of the rent to remain with Administrator. The issue of access road into the different shares resulting from sub division of L.R. Nyaki/Mulathankari/529 should be considered after each persons portion has been transferred to them. That is a matter for the surveyor and Land Registrar to resolve because **casements** are a right that each occupier/owner of land is entitled to. The Resolutions in the minutes of family meeting held on 25.2.2018 are adopted to the extent of the ruling herein.

Each party will bear their own costs.

HON. A.ONG'INJO

JUDGE

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

In the presence of:

C/A: Penina

Petitioner/Respondent: Present in person

Applicants: Mrs Ntarangwi Advocate for Applicant

HON. A.ONG'INJO

JUDGE