



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

SUCCESSION CAUSE NUMBER 86 OF 1992

IN THE MATTER OF THE ESTATE OF THE LATE

MUKURU GICHARU..... (DECEASED)

SILAS MBUTHIA MUKURU.....PETITIONER

VERSUS

JOHN GATHU MBOTE..... PROTESTOR

JUDGMENT

1. This judgment is in respect of a summons for confirmation of grant taken out on the 28/2/2007. The summons elicited a protest from John Gathu Mbote, a son of the original petitioner, the late Stephen Mbote.
2. In the affidavit of protest sworn on 28/8/2007, the protestor states that the grant of letters of administration issued to the present petitioner was sought and obtained through fraud and misrepresentation. He seeks to have the administrator substituted with someone else.
3. Directions were given that the matter be disposed off by way of *viva voce* evidence.
4. At the date and time appointed for hearing only the petitioner appeared. This fact is significant in the sense that having lodged a protest, it was the duty of the protestor to prosecute his protest and ventilate the issues raised in his case in the absence of which the petitioner's summons for confirmation and distribution proposed thereon remains unchallenged.
5. The petitioner testified that he filed the summons dated 28/2/2007 for confirmation of grant. The initial petitioner was Stephen Mbote Mukuru (now deceased).
6. Before Stephen Mbote died, he had obtained grant and had the same confirmed. He had sub-divided the land into 3 portions. When he took over, the petitioner states, he never altered the distribution as shown in the certificate of confirmation of grant. His only proposal is that the names of his deceased brothers be substituted by their representatives.
7. To the extent that the protest was hinged on alleged fraud and misrepresentation in the obtaining of the grant by the current petitioner, that claim must come a cropper as the correct procedure within the law would have been to apply for the revocation or annulment of the grant.
8. Secondly, the protest, as alluded to earlier on, fails miserably since the same was not prosecuted.
9. It now behoves this court to consider the mode of distribution proposed by the petitioner and form a view as to whether the proposed distribution is within the law and equitable.
10. The deceased (Mukuru Gicharu) had three (3) wives;

(1) FIRST HOUSE (WANJIKU MUKURU)

Children in this house were;

(a) KAMAU MUKURU

(b) MBOTE MUKURU

(c) MBUTHIA MUKURU

(d) MUTHUA MUKURU

(2) SECOND HOUSE (WANJIKU MUKURU)

Children in this house were;

(a) GITHUNGU MUKURU

(b) MAINA MUKURU

(3) THIRD HOUSE (WAMBUI MUKURU)

Children in this house were;

(a) NELSON NGIGE MUKURU

(b) SILAS MBUTHIA MUKURU

11. The petitioner proposes that the share of 2.1 acres due to the 1st house be distributed to the following surviving beneficiaries:

(a) JOHN GATHU MBOTE (son of the late STEPHEN MBOTE – original Petitioner) to be allocated 0.525 acres to hold in trust for himself and for the children of his late father – Stephen Mbote.

(b) WAINAINA KAMAU (son of the late JOYCE M KAMAU – now deceased) to be allocated 0.525 acres to hold in trust for himself and for the children of the late JOYCE M. KAMAU).

(c) NG'ANG'A MBUTHIA (a son of the late MBUTHIA MUKURU) to be allocated 0.525 acres of land to hold in trust for himself and for the children of MBUTHIA MUKURU (deceased).

(d) MUTHUA MUKURU – he is still alive and he should be allocated his 0.525 hectares.

12. Notably, the protestor comes from the 1st house. He is the son of Stephen Mbote through whom he claims. The petitioner in the proposed distribution has taken care of the interests of Stephen Mbote's (deceased) family as well as the families of the siblings of Stephen Mbote. There is no room to fault the petitioner's distribution.

13. I am persuaded that the summons for confirmation of grant herein merits to be confirmed.

14. The same is confirmed and the distribution be as hereunder;-

1ST HOUSE

1. John Gathu Mbote 0.525 acres (to hold in trust for himself and children of Stephen Mbote).

2. Wainaina Kamau (son of Joyce M. Kamau) 0.525 acres (to hold in trust for himself and for the children of the late Joyce M. Kamau).

3. Ng'ang'a Mbuthia 0.525 acres (to hold in trust for himself and for the children of Mbuthia Mukuru).

4. Muthua Mukuru 0.525 acres.

2ND HOUSE

1. Silas Mbuthia Mukuru (1.1 acres purchased from Maina Mukuru).

2. Timothy Mukuru Githungu 1.1 acres

3RD HOUSE

1. Nelson Ngige Mukuru 1.1 acres

2. Silas Mbuthia Mukuru 1.1 acres

15. As regards costs, I agree with counsel for the petitioner in his submission that the protest herein was needless and only achieved inordinate delay in the disposal of this matter.

I take note of the age of the matter and the close blood relationship between the parties. I am of the view that every effort should be brought on board to bring harmony among these family members. An order for costs against either party would not in my view promote this goal. I will accordingly order that each party bears its own costs.

Dated and Signed at Nakuru this 11th day of October, 2018.

A. K. NDUNG'U

JUDGE