



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

SUCCESSION CAUSE NO. 684 OF 2011

IN THE MATTER OF THE ESTATE OF M'NAIRUTI

M'IBIIRI ALIAS NAIRTU IBIIRI (DECEASED)

GEDION MWORIA

FLORENCE NAITORE.....PETITIONERS

EREN MUKOMUNENE

VS

LYDIA KARIMI STEPHEN.....APPLICANT

JUDGEMENT

The deceased M'Nairuti M'Ibiiri died intestate in 1969 leaving behind 2 widows, 6 daughters and 6 sons.

He also left behind one property L.R. Kiirua/Kiirua/120 measuring 8.73 Ha. Grant of Letters of Administration was made to Gideon Mworua Nairuti Fred, Florence Naitore and Eren Mukomunene jointly on 21st March 2012. The filed for confirmation of the grant on 5th November 2012. The application was supported by joint affidavit of the 4 administrators sworn on 5th November 2012 as well as separate affidavit sworn by Eren Mukomunene also sworn on 5.1..2012.

In the joint affidavit paragraph 5 proposed mode of distribution of L.R. Kiirua/Kiirua/120 and Ntima/Igoki/186. Grant was confirmed and a certificate dated 17th July 2012 issued distributing the estate as follows.

1. L.R. Kiirua/Kiirua/120

1. Eren Mukomunene – 3.5 acres
2. Benson Mugambi – 3 acres
3. Florence Naitore – 1 acres
4. Grace Kuri – 1 acre
5. Lydia Karimi Stephen (Holding in trust for herself and the children of Stephen Kaaria (Deceased) in equal shares – 3.25 acres
6. Mworua Nairtu – 3.25 acres
7. Mwenda Nairuti – 3.25 acres
8. Kamunti Nairuti 3.25 acres

2. Ntima/Igoki/186

Nathaniel Kithinji Ikiugu – 1.78 ha

Lydia Karimi Stephen (Holding in trust for herself and the children of Stephen Kaaria) – 0.44ha

From the list of beneficiaries, Nathaniel Kithinji Ikiugu is not a beneficiary and a letter dated 10.9.2011 by M/S J. K. Ntarangwi Advocates demanded on behalf of Lydia Karimi and her siblings that the Administrators stop intermeddling with L.R. Ntima/Igoki/186.

An application dated 27.11.2012 was filed by Lydia Karimi Stephen seeking that the grant herein be revoked and an order of inhibition be issued to preserve L.R. Ntima/Igoki/186 where the children of the late Stephen Kaaria Nairuti were occupying.

The applicant claimed she was not served or notified of the hearing of application for confirmation and was therefore denied an opportunity to be heard. She said that L.R. Ntima/Igoki/186 was meant to be inherited by their late father Stephen Kaaria Nairuti and that the Administrators had sold 1.78 ha out of it and the purchaser had given notice to the applicants that he intends to bring surveyors to carry out subdivision of L.R. Ntima/Igoki/186. The applicant called 3 witnesses to support her claim that L.R. Ntima/Igoki/186 which had been sold to Nathaniel Ikiugu by the Administrator was an inheritance that was meant to go to their late father Stephen Kaaria. Evidence was adduced that the deceased herein moved from the parcel of land in Ntima/Igoki/186 and left the late Stephen Kaaria who later constructed a permanent house where he lived with his wife and children. That later Stephen and his wife died and were buried within home on L.R. Ntima/Igoki/186. Evidence of 2nd applicants witness is that when Stephen Kaari's mother grew very old he took her and stayed with her at his home.

He said that the deceased persons 1st 3 children including Stephen Kaaria were born while he was staying in the land in Ntima/Igoki/186. He said in 2009 Mworja called a meeting and showed Stephen Kaaria's children boundary to the land in question and it was resolved that Nairuti's other children would not claim the land in Mwiruene. He said the Assistant Chief and Sub Area Manager attended the meeting called by Mworja. 3rd applicant's witness Francis Kibugo testified that he was from the same clan with the deceased. He said when the deceased moved from Mwiruene with the rest of his family only Stephen Kaaria remained and those who moved had never returned. He said the entire Nairuti family moved in the 1960s and it is only Kaaria who remained in the land in Igoki.

The 4th witness Anne Wangeci testified that when she got married in 1964 in Mwiruene her home was next to that of the deceased where there was only one mud house. She said the rest of the deceased person's family members didn't have houses on the land in question except Stephen Kaaria who constructed a permanent house. That after Stephen died his wife called Gedion Mworja to show him how Stephen had shared the land to his children.

Eren Mukomunene widow of deceased testified and said she didn't know Nathaniel Kithinji. She said it is Mworja who knows how Ntima/Igoki/186 was sold to Kithinji.

She said she signed sale agreement but she didn't know how to read and write. She said the signing was done in an office but she could not remember in which town the office was. She could not remember the amount of money she was given for sale of the land. She said land was sold to Nathaniel and proceeds used to process the succession cause. She said she didn't know if Stephen's children were given part of purchase price. She said L.R. Ntima/Igoki/186 is occupied by Stephen Kaaria's children.

Gideon Mworja testified and said it was not true that L.R. Ntima/Igoki/186 was given to Stephen Kaaria as the deceased herein didn't write a will. He said that L.R. Ntima/Igoki/186 was shared equally when grant was confirmed and the family of the late Kaaria was taken care of. He said each son and daughter of the deceased got one acre each out of L.R. Ntima/Igoki/186. He said daughter of the deceased didn't get any share from Ntima/Igoki/186. He said that applicant refused to attend meetings but it didn't matter because she was a granddaughter. He said he didn't have a mode of distribution by the whole family. He admitted that Nathaniel Kithinji was not a beneficiary but a purchaser and was to get 1.78 ha as he helped them process succession. He said they spend Kshs 275,000/= which they got from Kithinji and in lieu thereof he was to get a portion of land. He said the agreement was at home and he was stood down to go and get the agreement but when he returned to court he said the sale agreement was verbal between purchaser and the children of the deceased. He said Kshs 275, 000/= was used to pay advocate and surveyor. He said that Lydia refused to attend every meeting which was called and she was informed.

He said the share given to Nathaniel was to come from 4 sons and 2 daughters. He said there was no written agreement because they didn't know a dispute would arise. He said L.R. Ntima/Igoki/186 was being used by his brother Stephen Kaaria and no one else occupies the land except the children of Stephen Kaaria.

He said they had not given Stephen land out. He admitted that they moved out of L.R. Ntima/Igoki/186. He said they had not given Stephen's land out. He admitted that they moved out L.R. Ntima/Igoki/186. He said Karimi refused to sign consent for distribution.

The Administrators claims that members of the family agreed to sell a portion of L.R. Ntima/Igoki/186 is not supported. Whereas Eren Mukomunene says she signed sale agreement. Administrator says the sale agreement was verbal and that kshs 275, 000/= was used to process succession cause. He doesn't specify for how much 1.78 ha was purchased.

He doesn't say when and who received the money. No other beneficiaries have testified on sworn affidavits as to sale of a portion of L.R.Ntima/Igoki/186. Certificate of confirmation dated 17.7.2012 shows that Nathaniel Kithinji whom the only widow of the deceased says she doesn't know and whom the administrator admits is not a beneficiary has been given a share of the estate which portion is also said to be occupied exclusively by the children of the deceased. This in the view of this court is intermeddling per excellence.

This court hereby orders that the name of Nathaniel be removed from the certificate of confirmation and that L.R. Ntima/Igoki/186 to devolve to the children of the late Stephen Kaaria to share equally.

L.R. Ntima/Igoki/186 to be held in trust by Lydia Karimi and Newton Mugambi for themselves and the children of the late Stephen Kaaria Nairuti to share equally. Because Lydia said they had never lived in Kiirua and didn't even know that they were given land in Kiirua, the portion of land that had been a portioned to the children of the late Stephen Kaaria on L.R. Kiirua/Kiirua/120 will now go to Eunice Kagwiria, Joseline Kanana and Jeniffer Kajigi who had been left out of the distribution to share equally.

HON. A.ONG'INJO

JUDGE

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

In the presence of:

C/A: Penina

Mr Mureithi holding brief for Mwirigi Advocate for Petitioners – Present.

M/s E.G. Mwangi for applicants – N/A

Gideon Mworira – No appearance

Florence Naitore – No appearance

Eren Mukomunene – No appearance

Lydia Karimi – No appearance

HON. A.ONG'INJO

JUDGE