



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

SUCCESSION CAUSE NO. 121 OF 1989

In The Matter of the Estate of the Leah Karimi Alias Leah Zacharia (Deceased)

CELESTINO KINEGENI M'MUTHARA.....PETITIONER

Versus

GRACE KAARI NJERU.....PROTESTOR

JUDGMENT

Distribution of the estate

[1] This cause relates to the estate of **Leah Karimi alias Leah Zacharia** (deceased). She was survived by:

- 1. Zacaharia M'Muthara Ngajiu – widower (deceased)**
- 2. Celestino Kinigani – son**
- 3. Herodion Miti – son (deceased)**
- 4. Joanes Njeru – son (deceased)**
- 5. Kenneth Murungi – son**
- 6. Sarah Ithiru Riungu – daughter (deceased)**

The share of Herodian Miti and Joanes Njeru is being taken by Kenneth Micheni M'Twaiti and Grace Kaari respectively.

[2] The estate comprises of LR NO. MWIMBI/CHOGORIA/291. The petitioner who is also the administrator on 22nd February 2017 filed an application seeking confirmation of the grant where he proposed that the estate be distributed as follows:

- i. Celestino Kinigeni M'Muthara – 0.18 Acres**
- ii. Kenneth Murungi M'Muthara – 0.42 Acres**
- iii. Grace Kaari Njeru – 0.10 Acres**
- iv. Kenneth Micheni M'twaiti – 0.22 Acres**

[3] A protest was filed thereto and main ground was that the distribution was not fair and equitable. She proposed that the estate be distributed as follows:

- i. Celestino Kinigeni M'Muthara – 0.18 Acres**
- ii. Kenneth Murungi M'Muthara – 0.32 Acres**

iii. Grace Kaari Njeru

– 0.20 Acres

iv. Kenneth Micheni M'twaiti

– 0.22 Acres

[4] The petitioner argued in support of her proposal that he has given Kenneth Murungi a larger share because that portion of land thereto has a depression. On 1st March 2018, this court directed that the district physical planner and survey, Tharaka Nithi County, to visit the estate and establish: (1) whether the portion of land measuring approximately 0.42 acres being occupied by the family of the late Herodian Miti has a depression, and (2) if so, the location and size of the depression; and (3) whether the depression makes or does not make the land undevelopable. On 16th July 2018, the County Physical Planner, Tharaka Nithi and District Surveyor, Meru South filed their report with their observations. They stated that the 0.42 Acres has no depression and is developable and the occupant of the parcel can erect a retention wall along the parcel boundary to prevent soil erosion.

[5] The deceased died in 1972 and according to Section 2 (2) of the Law of Succession Act:

“(2) The estates of persons dying before the commencement of this Act are subject to the written laws and customs applying at the date of death, but nevertheless the administration of their estates shall commence or proceed so far as possible in accordance with this Act.”

[5] A reading of *Cotran Eugene, Restatement of African Law: 2 Kenya II The Law of Succession, Sweet & Maxwell at page 30* reveals that according to Meru customs the estate ought to be divided equally amongst the sons. In any case, the law of Succession Act reinforces the principle of equality. Looking at the mode of distribution suggested by the petitioner, I see mischief as it does not adhere to the principle of equality, and misrepresented that the 0.42 Acres have a depression that makes it undevelopable. See report by the planner and surveyor. The petitioner and protestor, however, seem to agree that the family of Herodian Miti should get a slightly larger share than the rest. The proposal by the protestor seems fair and reasonable given the facts of the case.

[6] Consequently, I order that the estate to be distributed as follows:

i. Celestino Kinogeni M'Muthara – 0.18 Acres

ii. Kenneth Murungi M'Muthara – 0.32 Acres

iii. Grace Kaari Njeru – 0.20 Acres

iv. Kenneth Micheni M'twaiti – 0.22 Acres

[7] The grant is confirmed on the above terms. I make no orders as to costs, for this is a succession matter involving close family members.

Dated, signed and delivered in open court at Meru this 8th day of October 2018

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F. GIKONYO

JUDGE

In the presence of:

Mr. Kitheka advocate for Petitioner

Mrs. Ntarangwi advocate for Mr. Kiogora for Protestor

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F. GIKONYO

JUDGE