



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

SUCCESSION CAUSE NO. 252 'A' OF 2012

In The Matter of the Estate of the Late Marieta Imathiu (Deceased)

GLORY KITHIRA RIMIRI.....PETITIONER

Versus

TERESIA WANJA NABEA.....OBJECTOR

JUDGMENT

Distribution of estate

[1] This judgment relates to the estate of Marieta Imaithiu, deceased. The estate comprises of LR NO. NYAKI/MUNITHU/105. A grant letters of administration intestate was made to Glory Kithira Rimiri on 16th October 2012 but was revoked on 10th October 2017. And on 4th December 2017, the court appointed the petitioner and objector as joint administrators of the estate and instructed each party to file their proposed mode of distribution.

Proposal by petitioner

[2] The petitioner in her affidavit sworn on 24th April 2018 proposed the estate to be distributed as follows:

LR NO.NYAKI/MUNITHU/105

1. *Victo John Koome – 100 points*
2. *Fabiano Maitima Imathi & Sabina Regeria M’Imanyara - 12 points jointly*
3. *Jane Nkatha Mwangi & Fredrick Gitonga - 12 points Jointly*
4. *Glory Kithira Rimiri - 125 points*

She stated that she has considered all the rightful beneficiaries. So, she has not given a share to the Objector because she is not a beneficiary of the estate.

Objector’s proposal

[3] The objector filed her affidavit sworn on 16th April 2018 and later filed a further affidavit sworn on 13th July 2018 where she deposed that the estate should be distributed equally among the surviving survivors, namely:

1. *Teresia Wanja Nabea - 0.50 Acres*
2. *Victo Koome - 0.50 Acres*
3. *Sabina Regeria M’Imanyara - 0.50 Acres*
4. *Jane Nkatha Mwangi - 0.50 Acres*

5. *Fabiano Maitima M'Imathiu* - 0.50 Acres

She averred that the petitioner is not a beneficiary but a very distant relative and should not get any share from the deceased's estate. She also averred that Fredrick Gitonga who is mentioned by the petitioner is not a beneficiary and has not even applied to get any share.

ANALYSIS AND DETERMINATION

Principle of non-discrimination

[4] I need not state that the principle of non-discrimination in Article 27 of the Constitution applies to the Law of Succession Act. See section 7 of the Sixth Schedule of the Constitution on existing law. Part V of CAP 160 deals with distribution of the estate of an intestate and has entrenched the principle of equality in section 38 of the Act. The proposal by the petitioner defies this principle. Worse still, she has included a party who has not been shown to be a dependant of the deceased. The party is Fredrick Gitonga whose relationship with the deceased has not been established. I remove him from the list of beneficiaries. That aside, I note both parties seem to allege that the other is not related to, or is a distant relative of the deceased, and has omitted the person from distribution. The matter was, however, dealt with and the court cannot go back and re-determine the issue. Accordingly, the rightful beneficiaries of the estate are:-

1. *Victo Koome*
2. *Fabiano Maitima M'Imathiu*
3. *Sabina Regeria M'Imanyara*
4. *Jane Nkatha Mwangi*
5. *Teresia Wanja Nabea*
6. *Glory Kithira Rimiri.*

[5] The greater concern now is to do my duty. As parties do not agree on distribution, I order that the estate of the deceased shall be shared equally among the following:

7. *Victo Koome*
8. *Fabiano Maitima M'Imathiu*
9. *Sabina Regeria M'Imanyara*
10. *Jane Nkatha Mwangi*
11. *Teresia Wanja Nabea*
12. *Glory Kithira Rimiri.*

[6] I confirm the grant of letters of administration herein in terms of paragraph 5 above. Given the nature of these proceedings, I make no order as to costs. It is so ordered.

Dated, signed and delivered in open court at Meru this 3rd day of October, 2018

F. GIKONYO

JUDGE

In the presence of:

Mr. Anampiu advocate for Objector – present

Petitioner in person - present

F. GIKONYO

JUDGE