



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

FAMILY DIVISION

SUCCESSION CAUSE NO. 667 OF 2016

IN THE MATTER OF THE ESTATE OF KIMANI MURA ALIAS KIMANI MUURA (DECEASED)

MARY NJERI MURA.....1ST APPLICANT

CECILIA WANJIRU MURA.....2ND APPLICANT

VERSUS

MICHAEL MUIGAI MURA.....RESPONDENT

RULING

1. The deceased Kimani Mura alias Kimani Muura died intestate on the 18th September 1984. He had the following children:-

- a) Charles Kimani Mura – son who is deceased and was survived by Phirisillah Wambui Kimani and Amina Nyaguthie;
- b) Henry Karugu Mura – son (deceased);
- c) David Kangethe Mura - son;
- d) Michael Muigai Mura – son (respondent);
- e) Wangui Mbugua –daughter;
- f) Mary Njeri Mura – daughter (1st applicant) ;
- g) Cecilia Wanjiru Mura - daughter (2nd applicant);

His estate comprised of the following property:

- a) parcel Loc 1/Mugumoini/365;
- b) parcel Loc 1/Mugumoini/10A;
- c) parcel Kakuzi/Kirimiri/Block 7/47;
- d) shares at Mugumoini Farmers Company Ltd;
- e) shares at Kihiu Mwiri Farmers Co. Ltd;
- f) shares at Gatanga Co-op Society;
- g) shares at Makenagira Farmers Co. Ltd;

h) shares at Kandara Mihathu; and

i) proceeds of bank account No. 07xx at Standard Chartered Bank at Thika.

2. On 18th September 1989 the respondent and David Kangethe Mura petitioned the Senior Resident Magistrate's Court at Thika for the grant of letters of administration intestate. A grant of letters of administration intestate was issued to them on 7th February 1991 and on 17th October 2013 was confirmed to the respondent.

3. The applicants, daughters of the deceased, filed the present application dated 18th April 2016 seeking to have the grant that was issued and confirmed revoked. The primary complaint was that they have not been involved in the confirmation of the grant, and neither had they been provided for in the distribution of their late father's estate to which they were entitled in the same way as their brothers.

4. There is no dispute that the applicants were not provided for in the distribution of the estate. The respondent's response was that the applicants were married daughters of the deceased who indicated that they were not interested in any share of the estate. The applicants denied that they renounced their claim to the estate, and stated that they were not even made aware that the estate was being shared. They deponed that they did not attend the confirmation of the grant.

5. There is no evidence on record that they renounced their claim to the estate, and there is no evidence on record that they participated in the proceedings leading to the confirmation of the grant. In the case of **re Estate of M'kubania Maunguti (Deceased) [2018] eKLR**, it was held that a renunciation by a beneficiary must be in writing and filed in court.

6. The applicants were beneficiaries of the estate of the deceased. Their being daughters, married or not married, did not disentitle them from benefiting from the estate of their deceased father. **Section 35(5) and 38** of the **Law of Succession Act (Cap 160)** provide for the equal sharing of the property of the deceased amongst his surviving children. It makes no distinction between female or male children, married or not married (**Reginah Nyambura Waitathu v Tarcisio Kagunda Waitathu & 3 others [2016] eKLR**). The applicants did not renounce their benefit, and were not invited by the respondent to attend the distribution of the estate during confirmation. The action of not being involved to the distribution was against the rules of natural justice. The action of not providing for them because they were daughters who were married was discriminatory under **Article 27(5)** of the Constitution of Kenya 2010. The applicants were not afforded equality before the law under **Article 27(1)** of the Constitution of Kenya 2010.

7. That being the case, and because it is the flawed distribution that is in issue, I revoke and set aside the certificate of confirmation that was issued to the respondent on 17th October 2013. I issue an injunction restraining the respondent, or any beneficiary, from disposing or otherwise transferring any of the properties constituting the estate of the deceased. This is to allow the fresh distribution including the applicants and other daughters of the deceased.

8. I direct that, within 30 days from today, the respondent and the applicants shall file affidavit(s) indicating how they want the estate of the deceased to be shared. Such affidavits shall be served on each beneficiary who shall have 14 days to respond. The matter shall be mentioned on 20th November 2018 for directions on hearing.

9. I ask that the respondent does pay costs of the application.

DATED and DELIVERED at NAIROBI this 2ND day of OCTOBER 2018.

A.O. MUCHELULE

JUDGE