



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MERU**

**SUCCESSION CAUSE NO. 358 OF 2009**

**In the Matter of the Estate of John Willy Mugambi Mugwika (Deceased)**

**MICHAEL KINOTI MUGAMBI.....PETITIONER**

**JUDGMENT**

[1] In the Summons for Confirmation of Grant dated 12<sup>th</sup> June 2016, the the Petitioner/Applicant has sought Confirmation of Grant issued to him on 9<sup>th</sup> July 2015, and proposes that distribution of the estate be as per paragraph 5 of the affidavit in support thereof. According to the Petitioner, distribution had been agreed upon by the beneficiaries. The Petitioner listed the following persons as the beneficiaries of the estate;

- a). **Bidan Muriungi-Deceased**
- b). **Gibson Gatobu Mugambi**
- c). **Joseph Mwirigi Mugambi-Deceased**
- d). **Gabriel Kithinji Mugambi**
- e). **Amos Kiogora.**

[2] The Petitioner also listed the assets to be:

- a). ***L.R NO. TIMAU SETTLEMENT SCHEME/962***
- b). ***L.R NO. TIMAU SETTLEMENT SCHEME/1110***
- c). ***MONEY IN CO-OPERATIVE BANNK A/C*** [Particulars Withheld]
- d). ***L.R NO. TIMAU SETTLEMENT SCHEME/587***
- e). ***L.R NO. TIMAU SETTLEMENT SCHEME/586***

[3] A protest to the Summons was filed by the 4<sup>th</sup>, 1<sup>st</sup> and 5<sup>th</sup> Protestors. In the affidavit of protests it is contended inter alia that the deceased during his lifetime had sold to them 0.38 acres to be excised from Timau Settlement Scheme/1186, 4 acres to be excised from Timau Settlement Scheme/587 and 0.38 acres to be excised from Timau Settlement Scheme 186 respectively.

[4] The 2<sup>nd</sup> and 3<sup>rd</sup> Protestors similarly filled affidavits of protests contending that they were sons of the deceased and who ought to have been consulted prior to filing of this succession cause. The 3<sup>rd</sup> Protestor further claiming that the Petitioner had misled the court that he was deceased whereas he was alive and well.

**Submissions**

[5] Briefly it was submitted for the Petitioner that all the beneficiaries/protestors had been provided for except the 2<sup>nd</sup> and 3<sup>rd</sup> Protestors who had been provided for during the lifetime of the deceased. It was urged further that it was evident from their affidavits of protests that they were not complaining of being denied a share of the estate, but were only concerned with the management of the estate. As such, they had no

business filing vague protests just to complicate the sharing of the estate of the deceased.

[6] On the other hand it was submitted for the Protestors that the 1<sup>st</sup>, 4<sup>th</sup> and 5<sup>th</sup> Protestors were purchasers as envisaged under Section 93 of the Law of Succession Act as they had purchased land from the deceased during his lifetime and their interests as purchasers should be factored in and thereafter of the net estate be equally.

#### **ANALYSIS AND DETERMINATION**

[7] Upon judicious consideration of this application, the protests and the rival contentions by the parties, I take this view of the matter. It is not in dispute that the Petitioner, the 2<sup>nd</sup> and 3<sup>rd</sup> Protestors are all sons of the deceased. It is also not in dispute that the Petitioner in his affidavit in support of the application for Confirmation of Grant has listed the 3<sup>rd</sup> Protestor as deceased whereas in actual sense the 3<sup>rd</sup> Protestor is alive and kicking. It is also not in dispute that the 2<sup>nd</sup> and 3<sup>rd</sup> Protestors despite being sons of the deceased have not been provided for in the proposed mode of distribution by the Petitioner. I find no evidence that they had renounced their rights. The Petitioner seemed to suggest that the reason for not providing for them was because the deceased had provided for them during his lifetime. No evidence was however tendered to support these allegations. It bears repeating that gift inter vivos should be proved for they will affect the share the donee will ultimately be entitled to in the estate. Second, it is a requirement of the law that such gifts be taken into account in the distribution of the estate. See section 28 and 42 of the Law of Succession Act.

#### **Purchaser's claim**

[8] The 1<sup>st</sup>, 4<sup>th</sup> and 5<sup>th</sup> Protestors claim that that they had bought parcels of land from the deceased during his lifetime. Written agreements to that effect were produced. The said evidence remained uncontroverted and was not challenged by the Petitioner. Yet, the Petitioner completely excluded this vital information in the pleadings. He also omitted even a mention of that fact or of the names of the Protestors. This is dishonest act on the part of the petitioner.

[9] The totality of all the circumstances of this case leads me to find that these Protests have merit. And I allow them. The estate shall therefore be shared as follows:

***1. The 1<sup>st</sup>, 4<sup>th</sup> and 5<sup>th</sup> Protestors shall have the portions that they bought from the deceased in accordance with their respective agreements.***

***2. The balance of the estate in each land and the money in Cooperative Bank shall be divided equally among the Petitioner, the 2<sup>nd</sup> and 3<sup>rd</sup> Protestors.***

[10] This being a succession matter, there will be no order as to costs.

**Dated, signed and delivered in open court at Meru this 2<sup>nd</sup> day of October, 2018**

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**F. GIKONYO**

**JUDGE**

**In the presence of:**

Mr. Kithinji advocate for Mr. Mutwiri Arimi for protestor

Mr. Kaimenyi for Kimathi for petitioner

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**F. GIKONYO**

**JUDGE**