



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT MERU**

**SUCCESSION CAUSE NO. 108 OF 2013**

**In the Matter of the Estate of M'ikiamba Mugwe**

**(Deceased)**

**STANLEY NTONGU M'ANANGA.....PETITIONER**

**VERSUS**

**SASINTA INOKOBIA.....INTERESTED PARTY**

**JUDGMENT**

**Twinning Revocation and confirmation**

[1] Before me are three applications; one for revocation of grant and two for confirmation of grant. I will first deal with revocation application.

**Revocation**

[2] Application by way of summons brought under Section 76 (b) and (c) of the Law of Succession Act CAP 160, Rule 44 (1), 49 and 73 of the Probate and Administration Rules seeking the following orders:

1. **THAT** the honorable court be pleased to issue an order revoking/annulling the grant of letters of administration issued to the petitioner on 14<sup>th</sup> October 2014
2. **THAT** the honorable court be pleased to issue an order of injunction restraining the petitioner STANLEY NTONGU M'ANANGA from disposing/alienating/selling/ and in any manner detrimental deal with any part of the deceased's estate in particular parcel No. KIEGO/KINYANKA/1040 and KIEGO/KINYANKA/586 that is under the control and management of the applicant/interested party pending the determination of the application
3. **THAT** cost of this application be provided for.

[3] On 14<sup>th</sup> October 2014 the court issued grant letters of administration appointing both the applicant and petitioner as administrators of the estate. Thus, the consent that the applicant seeks has already been overtaken by events as she is an administrator of the estate. Being an administrator you have certain powers and duties that are placed upon you. The reason behind appointment of two administrators is to protect the estate of the deceased. In that both personal representatives need to give their go ahead when dealing with the estate. If that is the case, how then can one personal representative sell or dispose or deal with the estate without the authority of the other personal representative or permission from the

beneficiaries.

[4] From the foregoing the application is unmeritorious and ought to be dismissed. Now the way is clear to determine distribution of the estate.

### **Distribution and confirmation of grant**

[5] According to the petitioner the estate should be distributed as follows:

#### **KIEGOI/KINYANKA/586**

1. Sasinta Inakobia Maore- - 0.50 Acres
2. Gitura M'Ikiamba - 0.20 Acres
3. Joseph Kaunange - 0.38 Acres
4. Joseph Kaberia M'Ikiamba & his son Fredrick Mutwiri jointly - 0.38 Acres
5. Isaiah Mururwa M'Ikiamba - 0.38 Acres
6. Joshua Kairia M'Ikiamba - 0.38 Acres
7. Charles Kirema M'Ikiamba - 0.38 Acres
8. Henry Githinji - 0.38 Acres

#### **KIEGOI/KINYANKA/1040**

1. Stanley Ntongu - 1 Acre
2. Secinta Inokobia Maore - 0.48 Points

[6] On the other hand, the applicant is of the view that the estate should be distributed as follows:

#### **KIEGOI/KINYANKA/586**

1. Lawrence Karithi Maore - 0.50 Acres
2. Joseph Kaunange - 0.48 Acres
3. Joseph Kaberia - 0.48 Acres
4. Joshua Kairia - 0.48 Acres
5. Isaiah Muruwa - 0.48 Acres
6. Charles Kirema - 0.48 Acres
7. Henry Githinji - 0.37 Acres

#### **KIEGOI/KINYANKA/1040**

1. Sasinta Inokobia Maore - 1 Acre
2. Stanley Ntongu M'ananga - 0.48 Points

[7] Contrary to the claims by Sasinta, Stanley Ntongu, the Petitioner herein, is related to the deceased for he is the son the deceased's sister, thus, a nephew. The applicant is a daughter-in-law to the deceased. The petitioner does not however claim as a dependant of the deceased but on the basis of a trust created by his late father when he committed his one acre to the deceased. I will come to this later.

[8] From the record, the two wives, Muthiru (deceased) and Gitura. The 1<sup>st</sup> House had the following children:

- a. Francis Maore (deceased)
- b. Julia Kayuki- daughter
- c. Matangu (deceased)
- d. Kathao- daughter
- e. Kabura (deceased)
- f. Joshua Kairera
- g. Joseph Kaunange

The second house had the following children:-

1. Joseph Kaberia
2. Vacu- daughter
3. Nchororo- daughter
4. Nkaira
5. Isaiah Muruwa
6. Charles Kirema
7. Henry Kithinji

[9] Ominously, parties herein seem to have ignored all the daughters in the sharing of the estate. I have not been shown any renunciation of right by the daughters. Nonetheless, none of the daughters or their representative has lodged any claim. Ordinarily, under **Section 38 of CAP 160** the estate of a deceased person ought to be distributed equally among his/her children. There seems to be no much issue between the parties with regards to Land parcel No. 586. The Applicant stated in her viva voce evidence that she has distributed this land amongst her son Lawrence Maore and the other sons of the deceased. Lawrence is a grandchild of the deceased and ought to demonstrate that he is a dependent of the deceased in order to get a share in the estate. Otherwise, grandchildren only get their deceased parent's share (in equal shares if more than one) by virtue of the principle of representation and **Section 41 of CAP 160**. Such share is regarded to belong to the estate of the deceased beneficiary and I suspect that is why the petitioner allocated the share of Francis Maore (deceased) to the Applicant- the widow. He did not state why he did so but as there could be other siblings of Lawrence Maore, it is a safe valve and in tandem with the law to have the widow hold the share of her late husband for herself and in trust of the family of the deceased beneficiary. In my career as a judge, I have encountered disputes amongst siblings because one of them was given their father's share and kept it to himself as if it was his absolutely. Nonetheless, it seems parties have agreed to give Francis Maore a larger portion of 0.50 acres in this land.

**Widow's interest**

[10] One marked departure from the proposal by the Applicant is that the petitioner has provided for the widow of the deceased one Gitura M'Ikiamba. In this era, widows are not limited to life interest in the properties they gathered with their husbands during their marriage. They are entitled to distinct share. And I keep on sounding a prophesy that, under the current constitutional dispensation, the law of Succession Act and the Matrimonial Properties Act, courts will be required to divide the matrimonial property upon death of one of the spouses. This way, the rights and property of the surviving spouse is determined and the property set aside from the estate of the deceased spouse. Therefore, the widow as long as she lives should have a distinct portion of her own.

### **Trust**

[11] The Applicant stated that the petitioner is not a dependant of the deceased and so he is not entitled to a share in the estate. I agree. But, the Petitioner does not claim as dependant of the deceased as a beneficiary for a trust of which the deceased was the trustee. The Applicant did not refute this claim. , yet, in her mode of distribution she gives him a share albeit it was 0.48 acres. Each party has provided the other with the smaller portion. But, the evidence provided shows that the Petitioner is entitled to 1 acre in **KIEGOI/KINYANKA/1040**. I so find.

### **In the final analysis...**

[12] I order that the estate of the deceased shall be distributed as follows:-

#### **KIEGOI/KINYANKA/586**

**1. Francis Maore - 0.50 Acres**

**(Sasinta Inakobia Maore to hold for her benefit and in trust for the family of Francis Maore)**

**2. Gitura M'Ikiamba - 0.20 Acres**

**3. Joseph Kaunange - 0.38 Acres**

**4. Joseph Kaberia M'Ikiamba - 0.38 Acres**

**5. Isaiah Mururwa M'Ikiamba - 0.38 Acres**

**6 Joshua Kairia M'Ikiamba - 0.38 Acres**

**7 Charles Kirema M'Ikiamba - 0.38 Acres**

**8 Henry Githinji - 0.38 Acres**

#### **KIEGOI/KINYANKA/1040**

**1. Stanley Ntongu - 1 Acre**

**2. Secinta Inokobia Maore - 0.48 Points**

[13] The grant is confirmed in the foregoing terms.

**Dated, signed and delivered in open court at Meru this 20<sup>th</sup> day of November 2018**

**F. GIKONYO**

**JUDGE**

**In presence of**

Petitioner – present

Interested party -present

**F. GIKONYO**

**JUDGE**