



**REPUBLIC OF KENYA**

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

**SUCCESSION CAUSE 309 OF 1994**

**IN THE MATTER OF ESTATE OF M'MAGIRI M'IKABA (DECEASED)**

**JULIUS GENNINGS GICHOGA.....1<sup>ST</sup> PETITIONER**

**ERASTUS MURIIRA M'MAGIRI.....2<sup>ND</sup> PETITIONER**

**VERSUS**

**MWINGOKA SELF HELP GROUP.....1<sup>ST</sup> PROTESTER**

**JANET KAIMURI KINYUA.....2<sup>ND</sup> PROTESTER**

**RULING**

This Succession Cause relates to the estate of M'Magiri M'Ikabu deceased. By a chamber summons application filed in court on 5<sup>th</sup> May 2015, the petitioners sought to distribute the estate of the deceased in accordance with paragraph 8 thereof.

The proposed mode of distribution was opposed by the 1<sup>st</sup> protester and the 2<sup>nd</sup> protester via Replying affidavits filed in court on 3<sup>rd</sup> and 8<sup>th</sup> December respectively who contended inter alia that they had entered into sale agreements with some of the beneficiaries and that ever since they entered into said agreement, the entire family of the deceased had taken possession of the said portions which they had heavily developed.

By a ruling delivered by court on 23<sup>rd</sup> May 2018, the court noted that the petitioner had distributed the estate amongst the three sons only leaving out the daughters and the widow to the deceased. The court further noted that the widow and daughters had filed any affidavit renouncing their interests in the estate and that it would be important to have them attend court and expressly renounce their interest. It also emerged during the hearing that Erastus Mugiira and James Kiambi Magiri were already deceased and the court would therefore not go ahead and confirm distribution to them as proposed by Julius Gennings Gichoga.

The court therefore directed the estate would be subject to distribution after identification of survivors of the deceased beneficiaries and attendance in court of the widow and daughters of the deceased if a live.

When the parties appeared in court on 15<sup>th</sup> October 2018, it appeared that James Kiambi was actually alive. Similarly on 5<sup>th</sup> November 2018, the protestors were present in court while the petitioners were represented by Ms Kiome. The court subsequently directed that the matter be mentioned on 7<sup>th</sup> November 2018, to record consent on distribution. On the said date there was no appearance for the protestors. The representatives of Erastus Mugiira were however present in court. The parties intimated to court that they had agreed on distribution as follows:-

- Marion Karimi Riungu to get 0.68 acres out of Nkuene/Taita P/No. 280
- Harriet Tirindi to get 0.068 from Nkuene/Taita P/No. 280
- Erastus Mugiira M'Magiri survivors to get 0.096 acres of Nkuene/Taita P/No. 280
- James Kiambi Magiri get 0.096 acres out of Nkuene/Taita P/No. 280
- The other parcels to remain as proposed by the petitioner in his proposed mode of distribution.

In the affidavit supporting Julius Gennings Gichogas application for confirmation he did propose that L.R. Nkuene/U – Mukumbune/767 – Measuring 4.75 acres be shared equally between himself and Erastus Muguria M'Magiris wife/widow and children, L.R. Nkuene/L.Mikumbune/108 – measure 2.035 acres to be taken in whole by James Kiambi Magiri. If the sons of the deceased Erastus Mugiira and Julius Gennings Gichoga get 2.375 each and James Kiambi gets 2.035 it would mean that in addition to 0.096 from L.R Nkuene/Taita/280 they will get each 2.471 to Julius and Erastus and 2.131 acres to James Kiambi as compared to 0.68 acres each that Marion

Karimi Riungu and Harriet Tirindi are proposed to get respectively. This would mean that the sons get the lion's share to disadvantage of the ladies.

My view is therefore that the sons of the deceased who are benefiting from LR Nkuene/U-Mikumbune P/ No. 767 and Nkuene/L-Mikumbune P/No. 108 as proposed in the affidavit and Plot No. 60 'C' Nkubu market which the sons should share equally should leave the entire parcel No L.R Nkuene/Taita/280 and Plot no. 15B Nkubu Market to be shared by deceased persons daughters equally. The shares will then go to the widow if alive and children of the late Erastus Mugiira M'Magiri to share equally.

There shall be no orders as to costs.

**HON. A.ONG'INJO**

**JUDGE**

**RULING SIGNED, DELIVERED AND DATED THIS 15<sup>TH</sup> DAY OF NOVEMBER 2018.**

**In the presence of:**

C/A: Kinoti

1<sup>ST</sup> Petitioner – Mr. Gikunda holding brief for Kome

Mr gataru for 2<sup>nd</sup> Petitioner

Ms Aketch Advocate for protesters.

**Court**

Certified copy of ruling to be supplied upon payment of copying charges

Applicant:

**HON. A.ONG'INJO**

**JUDGE**