



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

SUCCESSION CAUSE NO. 267 OF 2012

In The Matter Of The Estate Of Tuerandu M'murugu Alia Tuerandu Murugu (Deceased)

SALOME KAIGONGI MUGUNA.....1ST PETITIONER

KENNETH MUNYUA KINUBA.....2ND PETITIONER

Versus

GEORGE MEME.....1ST INTERESTED PARTY

VERONICA NKATHA.....2ND INTERESTED PARTY

JUDGMENT

1. **Tuerandu M'Murugu Alia Tuerandu Murugu (“the deceased”)** to whom this Succession Cause relates, died on 25th August 1983. The interested parties applied vide Summons for Revocation of Grant for the grant of letters of administration and confirmation thereof made to the petitioners herein to be revoked. Reading from the affidavits filed and the submissions of parties, it emerges that the deceased was married to three wives namely, Kareia, Naomi Karimi and Julia- all of them deceased. The 1st and 2nd interested parties stated that as grandson and daughter of the deceased, respectively, they are beneficiaries of the estate and therefore are entitled to a share herein. They are from the 1st house yet they did not benefit from the estate. According to them, only the 3rd house benefited from the estate herein. They also alleged oral will by the deceased. But, looking at the law, none was proved as required by the law. See Section 9 of the Succession Act below:

9. Oral wills

(1) No oral will shall be valid unless-

(a) it is made before two or more competent witnesses; and

(b) the testator dies within a period of three months from the date of making the will:

Provided that an oral will made by a member of the armed forces or merchant marine during a period of active service shall be valid if the testator dies during the same period of active service notwithstanding the fact that he died more than three months after the date of making the will.

(2) No oral will shall be valid if, and so far as, it is contrary to any written will which the testator has made, whether before or after the date of the oral will, and which has not been revoked as provided by sections 18 and 19. 10. Proof of oral wills If there is any conflict in evidence of witnesses as to what was said by the deceased in making an oral will, the oral will shall not be valid except so far as its contents are proved by a competent independent witness

2. That notwithstanding, the applicants are entitled to a share in the estate. The 2nd Interested Party is the daughter of the deceased and has a direct right. And the 1st Interested Party takes his mother's share through the principle of representation. The petitioners seem to have realized this reality and offered to give the two 0.50 acres to be excised from LR. NO NTIMA/IGOKI/8967. In such case of polygamy, section 40 of the Law of Succession Act would apply. The section provides as below:

40. Where intestate was polygamous

(1) Where an intestate has married more than once under any system of law permitting polygamy, his personal and household effects and the residue of the net intestate estate shall, in the first instance, be divided among the houses according to the number

of children in each house, but also adding any wife surviving him as an additional unit to the number of children. (2) The distribution of the personal and household effects and the residue of the net intestate estate within each house shall then be in accordance with the rules set out in sections 35 to 38.

[3] But it seems that only the two applicants have approached the court. The two urged the court to give each one of them ½ acre. See their joint amended sharing schedule filed dated 31st October 2017. The petitioners have proposed that the two should get ½ acre. To me therefore, the real issue in controversy is distribution and it may not be prudent to revoke the grant. I note also that parties have established themselves on the land and this is a consideration at this stage. The fact that only house three benefited, it is not fair to give the interested parties only 0.50 acres jointly. I note also that **LR. NO NTIMA/IGOKI/8967** is in the names of Salome and Kenneth who are also registered in respect of entire **LR. NO NTIMA/IGOKI/8964**. Instead, and in the interest of justice, I direct that the two applicants shall have the entire **LR. NO NTIMA/IGOKI/8967**. In light thereof, the certificate of confirmation of grant shall be accordingly amended. All the other items in the earlier certificate of confirmation of grant shall remain as is. Grant confirmed in the foregoing terms. I have received albeit belatedly a further affidavit entitled FURTHER AFFIDAVIT IN VERIFICATION by George Meme. The affidavit introduces a twist to the matter; distribution of compensation money upon compulsory acquisition of LR NTIMA/IGOKI/4583. I will not consider that aspect as compulsory acquisition affects and relates to the person entitled to the part so acquired. It is so ordered.

Dated, signed and delivered in open court at Meru this 13th day of November 2018

F. GIKONYO

JUDGE

In presence of

M/S Wanjohi for Muriuki for petitioner

Applicant in person – present

F. GIKONYO

JUDGE