



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

SUCCESSION CAUSE NO. 552 OF 2013

IN THE MATTER OF THE ESTATE OF MBOROKI MUTIGA (DECEASED)

JUSTER NKIROTE.....1ST PROTESTOR

BETTY MUKIRI MUGAMBI.....2ND PROTESTOR

VERSUS

JOSEPH G. IKABU.....PETITIONER

R U L I N G

1. **Mboroki Mutiga (“the deceased”)** died intestate on 26th November, 1978. On 15th January 2014, a Grant of Letters of Administration intestate in respect of his estate was made to **Joseph G. Ikabu M’Mboroki** and **Ernest M’Igweta M’Mboroki**.

2. By Summons for Confirmation of Grant dated 16th July 2014, the Administrators indicated the following to be the surviving dependants of the deceased: -

- | | | |
|--------------------------------------|---|-------------------------|
| a) M’Mbui M’Mboroki | - | son |
| b) Joseph G. Ikabu M’Mboroki | - | son |
| c) Ernest M’Igweta M’Mboroki | - | son |
| d) Julius Kairanya M’Mboroki | - | son |
| e) Margaret Kigetu M’Raikanya | - | daughter |
| f) Esther Ntinyari | - | grand daughter |
| g) Judith Karegi Mugambi | - | grand daughter |
| h) Felicity Nkatha Mugambi | - | grand daughter |
| i) Lilian Kanana Mugambi | - | grand daughter |
| j) Anthony Murithi Mugambi | - | grand daughter |
| k) Juster Nkirote | - | daughter in law. |

3. In the Further Affidavit in support of that Summons sworn on 27th October, 2014, the administrators sought to distribute the estate of the deceased as follows: -

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- a) **Judith Karimi M’Mugambi**

Felicity Nkatha Mugambi

Lilian Kanana Mugambi

Anthony Murithi Mugambi (minor) - To share 1.5 acres equally

b) M'Mbwi M'Mboroki - 1.35 Acres

c) Margaret Kigetu M'Raikanya - 50x100FTS

d) Esther Ntinyari Ikabu - 2.00 Acres

e) Joseph G. Ikabu M'Mboroki - 2.50 Acres

f) Julius Kairanya Mboroki - 2.00 Acres

g) Ernest M'Igweta M'Mboroki - 2.00 Acres

4. While this Cause was pending, **Ernest M'Igweta M'Mboroki**, a beneficiary, died and his widow **Lucy Kathambi M'Igweta** took letters of administration in respect of his estate. Further, one **Lilian Kanana Mugambi**, who was identified as a granddaughter of the deceased both in the letter of introduction by the chief as well as in **Form No. P & A 5**, the affidavit in support of the petition, died and one **Brenda Cherotich Koech** was appointed as an administrator of her estate.

5. On 25th September, 2018 **Juster Nkirote and Betty Mukiri Mugambi ("the protestors")** protested the aforesaid mode of distribution. They contended that the 1st protestor was a daughter in-law to the deceased as she had been married to his son, **Joseph Mugambi Anampiu** (deceased). The 2nd protestor is one of the children of the 1st protestor with whom she got with **Joseph Mugambi Anampiu**. Apart from the 2nd protestor, the record showed that **Joseph Mugambi Anampiu** had other children, to wit, **Anthony Murithi Mugambi (minor), Judith Karimi Mugambi, Felicity Nkatha Mugambi and Lilian Kanana**.

6. The protestors further contended that **Joseph Mugambi Anampiu** was entitled to a share of at least 2 acres from his father's estate which should be divided between the 1st protestor and his children. They stated that Esther Ntinyari Ikabu, who was a daughter of one of the administrators (Joseph Ikabu) and a granddaughter of the deceased, had been given 2 acres yet her father was also benefiting from the estate of the deceased by getting 2.50 Acres. The protestors therefore gave their own mode of distribution which suggested equal distribution of the estate to all the beneficiaries of the deceased.

7. I have carefully considered the proposed mode of distribution by the petitioner and the protestors. It is not in dispute that **Joseph Mugambi Anampiu** was a son of the deceased and left behind a widow and children. The 1st objector did not consent to the petitioner's distribution. It is also not in dispute that the petitioner proposed to distribute to himself 2.50 acres and his daughter **Esther Ntinyari Ikabu** 2.00 acres. Under **section 42 of the Law of Succession Act ("the Act")**, the said **Esther Ntinyari Ikabu** is supposed to get her share from her father's share and not directly from her grandfather, the deceased.

8. In this regard, the proposed mode of distribution by the petitioner is not only unfair, unreasonable, unjust and skewed towards benefiting the petitioner, but it is out-rightly illegal as it is in breach of **section 38 of the Act**.

9. On the other hand, the distribution proposed by the protestors is in accordance with the law. Since both **M'Mbwi M'Mboroki** and **Margaret Kigetu M'Raikanya** had agreed and consented to the proposed distribution by the petitioner, I will retain their shares as proposed by him and as adopted by the protestors.

10. Accordingly, the estate of the deceased shall be distributed as follows: -

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a) Juster Nkirote - 0.13 ha

Betty Mukiri Mugambi - 0.13 ha

Anthony Murithi Mugambi (share

to be held in trust by Juster Nkirote

and Betty Mukiri Mugambi) - 0.13 ha

Judith Karimi Mugambi - 0.13 ha

Felicity Nkatha Mugambi - 0.13 ha

Brenda Jerotich Koech	-	0.13 ha
b) Lucy Kathambi M'Igweta	-	1.066 ha
c) Julius Kairanya Mboroki	-	1.12 ha
d) Joseph G. Ikabu M'Mboroki	-	1.12 ha
e) M'Mbwi M'Mboroki	-	0.405 ha
f) Margaret Kigetu M'Raikanya	-	0.052 ha

11. This being a succession matter there will be no order as to costs.

DATED and DELIVERED at Meru this 8th day of November, 2018.

A. MABEYA

JUDGE