



**REPUBLIC OF KENYA**

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

**SUCCESSION CAUSE 602 OF 2010**

**IN THE MATTER OF ESTATE OF M'ITUNGA M'RWARA**

**MIRITI M'ITUNGA.....1<sup>ST</sup> PETITIONER**

**ERASTUS KIMATHI M'ITUNGA.....2<sup>ND</sup> PETITIONER**

**-VERSUS-**

**SUSAN KABURO.....PROTESTER**

**RULING**

The deceased M'Mutunga M'Rwara died on 29<sup>th</sup> October 1998 and was survived by:-

1. Stephen Miriti –son(deceased)  
Daughter in law Ruth Miriti
2. Miriti M'Itunga – son
3. Erastus Kimathi – son
4. Hellen Mugure
5. Pauline Miriko
6. Gladys Gakii – daughter
7. Patrick Gikunda – son – Deceased
8. Jackson Mwenda – grandson
9. Karen Nkatha – grand daughter
10. Eunice Kathume – grand daughter

The deceased was registered proprietor of parcels of land No.

- Nkuene/Uruku/386
- Nkuene/Uruku/993

Mviti M'Itunga and Erastus Kimathi got consent to petition for Letter of Administration and grant was made on 9<sup>th</sup> May 2011. Application for confirmation dated 19<sup>th</sup> July 2012 was filed and was supported by affidavit sworn by the 2 administrators jointly on 19.7.2012. Jackson Mwenda Itunga the grandson –dependant – to deceased also died – certificate of death dated 16.12.2013 and a supplementary affidavit was filed seeking that share that would have been given to Jackson Mwenda Itunga be given to Gladys Gakii Ibrahim.

The list of beneficiaries shows Gladys Gakii Ibrahim is daughter to deceased herein and therefore entitled to her own share if Jackson dies before benefitting the share that he should have been given is to be distributed to surviving beneficiaries as estate is for the deceased herein and not the said Jackson Mwenda.

Erastus Kimathi M'Itunga proposed distribution in affidavit sworn on 17<sup>th</sup> September 2014 as follows:-

1. L.R. Nkuene/Uruku/993 to Miriti M'Itunga – wholly.
2. L.R. Nkuene/Uruku/386 to
  - Pauline Miriko and Karen Nkatha – 1 acre to share equally.
  - Erastus Kimathi – 1.50 acres
  - Miriti M'Itunga
  - Gladys Gakii Ibrahim to share balance equally
  - Ruth Miriti

In affidavit sworn on 4<sup>th</sup> Dec 2014 Erastus proposed another mode of Distribution as follows.

1. Pauline Miriko and Karen Nkatha – 1 acre equally
2. Erastus Kimathi – 1.50 acres
3. Miriti M'Itunga – 1.50 acres
4. Gladys Gakii – 1.50 acres
5. Ruth Murithi – 1.50 acres
6. Balance to be shared equally

In affidavit in support of confirmation sworn on 8.1.2014 by Miriti M'itunga, he proposes distribution as follows:-

- a. L.R. Nkuene/Uruku/993 to himself
- b. L.R. Nkuene/Uruku/386 to
  - Pauline Miriko – 0.50 acres
  - Hellen Mugure – 0.50 acres
  - Gladys Gakii – 0.50 acres
  - Susan Kiburo – 0.50 acres
  - Miriti M'Itunga – 0.50 acres
  - Karen Nkatha – 1 acre
  - Ruth Miriti – 1.50 acres
  - Erastus Kimathi – 1.00 acre

Susan Kaburo is in her statement claimed Erastus sold to her 0.50 acres and she protested mode of distribution proposed by Erastus Kimathi. Ruth Murithi in her statement said she is widow of Stephen Murithi, a beneficiary and she occupies 1.50 acres out L.R. Nkuene/Uruku/386 which is distinctly marked. She supported mode of distribution by Miriti M'Itunga Pauline Miriko in her statement said that what was due to Jackson Mwenda should go to his mother Gladys Gakii after his death i.e 1.50 acres.

Gladys Gakii also supported proposal by 2<sup>nd</sup> Administrator Erastus Kimathi, Erastus Kimathi M'itunga filed a statement in which he gave proposal of distribution supported by Pauline Miriko and Gladys Gakii.

Nkatha Karen was daughter of deceased son known as Patrick Gikunda who also died and she said the proposal by Miriti M'itunga proposal is most equitable. From the evidence adduced by the petitioners and their witnesses as well as protester Susan Kaburo this court is to determine the fair, reasonable justifiable mode of distribution. The undisputed facts are that:-

Miriti M'itunga is to get L.R. Nkuene/Uruku/993 which is 1.18 acres wholly. Ruth Murithi the daughter in law of the deceased is also to get 1.50 acres to hold for herself and the children of her deceased husband in trust to share equally from L.R. 386. It is also not disputed that Pauline the daughter of the deceased is to get 0.50 acres from L.R. 386 without considering the claim of Susan Kaburo, it is also undisputed that Erastus Kimathi is to get 1.50 acres out of L.R. No. Nkuene/Uruku/386. Susan Kaburo claims to have bought 0.50 acres from Erastus Kimathi and the said Kimathi has denied that fact. Whether he denies or admits have sold 0.50 acres of land to protester, the same was sold without authority and that could amount to intermeddling with estate property and therefore null and void. Susan Kaburo should pursue her claim from Erastus Kimathi after grant is confirmed.

From the proposed distribution by both administrator it appears that the sons of the deceased are supposed to get at least over one acre and Ruthi Murithi the widow of one of the sons has been allocated 1.50 acres in that regard. Erastus Kimathi is also getting 1.50 acres and Miriti M'itunga is getting 1.18 acres from L.R. 993.

It therefore follows that the deceased father of Karen if alive would have been entitled to 1.50 acres from L.R. 993. Karen Nkata has however conceded to get only one acre out of L.R. 993 instead of 1.50 acres like the sons of the deceased. I think this is a reasonable concession. Mr Gichunge advocate doesn't explain why he submits that Karen Nkata should be treated as daughters of deceased when she was actually a daughter to deceased persons son.

The only issue remaining is for Gladys Gakii Ibrahim, her son Jackson Mwedna had been given land by the deceased. He however, died with no surviving child or spouse Gladys will get 1.00 acres out of the deceased persons estate. There shall be no orders as to costs.

**HON. A.ONG'INJO**

**JUDGE**

**RULING SIGNED, DELIVERED AND DATED THIS 8<sup>TH</sup> DAY OF NOVEMBER 2018.**

**In the presence of:**

C/A: Kinoti

Mr. Omari Advocate for Mwirigi for 1<sup>st</sup> petitioner.

Mr. Gichunge Advocate for 2<sup>nd</sup> Petitioner – N/a

1<sup>st</sup> Petitioner:- Present in person

2<sup>nd</sup> Petitioner:- Present in person

Protester:- Present in person.

**Order**

Copy of ruling to be supplied at costs of the party.

**HON. A.ONG'INJO**

**JUDGE**