



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

SUCCESSION CAUSE NO. 333 OF 2011

In The Matter Of The Estate Of Jamleck Ikiara Kiambatia Alias Jamleck M'ikiara M'kiambati (Deceased)

LEAH NKIROTE JAMLECKPETITIONER

VERSUS

HENRY GATOBU KIAMBATICITOR

JOSHUA MBOGORI.....INTERESTED PARTY

JUDGMENT

[1] **JAMLECK IKIARA KIAMBATIA** alias **JAMLECK M'IKIARA M'KIAMBATI** (“the deceased”) is the person to whose estate these proceedings relate. He died on 29th August 2010. In s letter dated 15th October 2010, the District Officer, Kibiricha Division listed the dependants of the deceased to be:

1. *Charity M'Ikiara*
2. *Leah Nkirote Jamleck*
3. *Esther Wanja Jamleck*
4. *Hellen Gakii Ikiara*
5. *Late Wilson Murithi Ikiara*
6. *Joshua Mbogori Ikiara*
7. *Henry Gatobu Kiambati (Interested Party)*

[2] From the record his assets are listed as comprising of:

1. **KIBIRICHIA/KIBIRICHIA/1989 – 3.12 Ha**
2. **KIBIRICHIA/KIBIRICHIA/649 – 4.21 Ha**
3. **NANYUKI/MARURA BLOCK 8/112/NTURUKUMA – 0.800 Ha**

[3] On 21st November 2013 grant of letters of administration were issued to Leah Nkirote Jamleck and Henry Gitobu Kiambati. On 3rd October, 2016 Leah Nkirote Jamleck filed summons for confirmation of grant, and later filed a supplementary affidavit sworn on 8th November 2016. The petitioner filed an affidavit in support of summons for confirmation of grant where she abandoned and withdrew all her prior pleadings.

[4] She deposed that the deceased was registered as a joint proprietor together with one Joshua Mbogori Ikiara and Wilson Murithi Ikiara (deceased) of land number **KIBIRICHIA/KIBIRICHIA/1989**. According to her, this parcel of land should automatically go to the only surviving joint proprietor, Joshua Mbogori Ikiara by the operation of the law and is not available to the estate of the deceased. She also averred that the deceased was registered as a proprietor in equal shares together with Joshua Mbogori Ikiara, Wilson Murithi Ikiara(deceased) and Henry Gatobu Kiambati.in **KIBIRICHIA/KIBIRICHIA/649**. Therefore, in the latter property only the share of the deceased, to wit,

1.05 Ha out of the 4.21 Ha is available for distribution in these proceedings. Since the deceased catered for his sons and did not provide for his daughter she proposed the estate to be distributed as follows:

A. KIBIRICHIA/KIBIRICHIA/649

1. *Hellen Gakii Kiara*
2. *Esther Wanja Jamleck to share 1.05 Ha (2.59 Acres) equally*

B. NANYUKI MARURA BLOCK 8/1121 Leah Nkirote Jamleck

C. 273 SHARES AT THE KENYA GRAIN GROWERS CO-OPERATIVE UNION

To be sold and proceeds shared equally among:-

1. *Leah Nkirote Jamleck*
2. *Hellen Gakii Kiara*
3. *Esther Wanja Jamleck*

D. CASH AT NATIONAL BANK OF KENYA LTD

1. *Leah Nkirote Jamleck*
2. *Hellen Gakii Kiara*
3. *Esther Wanja Jamleck to share equally*

Protest

[5] In the affidavit of protest to the mode of distribution filed by Henry Gatobu Kiambati on 6th April 2017, it was deposed that:

1. The petitioner left the applicant out of distribution of the estate, thus, disinheriting him:
2. The petitioner did not even consult him before filing the application for confirmation.
3. During his lifetime the deceased gave him a portion of **L.R.KIBIRICHIA/KIBIRICHIA/649** on which he has developed a homestead where he lives with his entire family.

[6] He proposes that the estate be shared out as follows:

A. KIBIRICHIA/KIBIRICHIA/1989

1. Dorcas Kanungu M'Murithi - 0.50 Acres
2. Leah Nkirote Jamlick'
3. Hellen Gakii Kiria to share the balance
4. Esther Wanja Jamlick in equal shares
5. Henry Gatobu Kiambati
6. Joshua Mbogori Ikiara

B. KIBIRICHIA/KIBIRICHIA/649

1. Joshua Ikiara
2. Henry Gatobu Kiambati in equal shares

C. NANYUKI MARURA BLOCK 8/1121

To be shared out to HENRY GATOBU KIAMBATI alone in accordance with the wishes of the deceased, who had given out the land when he was alive.

D. KENYA GRAIN GROWERS CO-OPERATIVE UNION AND CASH IN BANK

To be shared equally to all the children of the deceased.

ANALYSIS AND DETERMINATION

[7] The court has been called upon to distribute the estate of the deceased. To achieve this primary task, the court must first establish the assets of the deceased, the identities of the rightful beneficiaries and or dependants of the estate and their respective shares in the estate. From the record the deceased was survived by **Charity M'Ikiara (wife), Leah Nkirote Jamleck (daughter), Esther Wanja Jamleck (daughter), Hellen Gakii Ikiara (daughter), Late Wilson Murithi Ikiara (son), Joshua Mbogori Ikiara (son) and Henry Gatobu Kiambati (son)**. However, his wife and his son Wilson Murithi Ikiara are now deceased. Hence, I take that the deceased is survived by children but no spouse. As such, the governing provisions of the law is Section 38 of CAP 160. It states that the estate of an intestate ought to be equally distributed amongst an intestate's children.

Estate property

[8] What then comprises the assets of the estate? It is not in dispute that the deceased had shares at the Kenya Grain Growers Co-operative Union and cash at the National Bank of Kenya. There is no dispute about these two assets. I find they are estate property. With regard to Kibirichia/Kibirichia/1989, the petitioner states that it is not part of the estate as the property devolves upon the surviving proprietor. I have perused the record for Succession 243 of 1995 and it shows that Kibirichia/Kibirichia/1989 was distributed wholly as part of the estate of Wilson Murithi Ikiara. According to the certificate of confirmation of grant issued in that cause distribution of that property was as follows:

L.R. NO. KIBIRICHIA/KIBIRICHIA/1989

1. *Joshua Mbogori Ikiara* - 2.53 Acres
2. *Leah Nkirote Jamlick* - 2.00 Acres
3. *Esther Wanja Jamlick* - 1.565 Acres
4. *Helen Gakii Kiara* - 1.565 Acres

[9] The foregoing distribution changed the proprietorship of **KIBIRICHIA/KIBIRICHIA/1989**. For that reason, the said land is not available for distribution in these proceedings. I wish to state however that the rule of survivorship which the petitioner and Joshua seem to rely upon may not be particularly potent in light of the above circumstances.

[11] In the same succession cause and following rectification of an error, property **L.R. NO. KIBIRICHIA/KIBIRICHIA/649** was distributed as follows:

1. *Joshua Mbogori Ikiara* - 2.5 Acres
2. *Jamlick M'Ikiara M'Iambati* - 5.39 Acres
3. *Henry Gatobu Kiambati* - 2.50 Acres

The deceased was the administrator and distributed the estate of Wilson Murithi Ikiara to his children as above. He also took 5.39 acres as shown above.

Previous settlements

[11] It has been claimed that the deceased provided land to his sons during his lifetime. This is called in law gift inter vivos. I should therefore seek the record of **L.R. NO. KIBIRICHIA/KIBIRICHIA/ 1989 & 649** for purposes of this claim of gift inter vivos. The certificate of search and the green cards on No 649 property show that the deceased owned this property alone as at 8th July 1985 and charged it to secure some credit on several times until 7th November 1991. On 18th May 1993 is when the property was registered into the names of the deceased, Joshua, Wilson and Henry in equal shares. According to the statement of Miraim Kajuju Marete she stated that Henry grew up and established a homestead on the land parcel No. 649 after being allowed to do so by the deceased. The certificate of search and the green cards on No 1989 show that the deceased owned this property alone as at 26th April 1993. It was thereafter registered in the names of the deceased, Joshua and Wilson on 18th May 1993. All these pieces of evidence confirm that these parcels of land initially belonged to the deceased but during his lifetime he made gifts of the lands to his children. Therefore, I find that the deceased catered for all his children during his lifetime is proved. Joshua has the biggest portion. He seems to support the proposal by the petitioner. See his affidavit of protest. Such benefits will be taken into account in determining the ultimate entitlements of such persons in the estate. See Section 42 of the Law of Succession Act which states:

“Where—

(a) an intestate has, during his lifetime or by will, paid, given or settled any property to or for the benefit of a child, grandchild or house; or

(b) property has been appointed or awarded to any child or grandchild under the provisions of section 26 or section 35 of this Act, that property shall be taken into account in determining the share of the net intestate estate finally accruing to the child, grandchild or house.”

[12] The protestor also claimed that Nanyuki Marura Block 8/1121 was given to him by his deceased father. This was supported by the statement of Samuel Mugambi. But there was no cogent evidence to prove the gift. I reject the claim. As for Land parcels No. 1989; was wholly and 649 partially distributed, respectively, in distributed in succession cause 243 of 1995. Therefore this court cannot distribute asset that has already been distributed, except, the share of 5.39 acre in LR NO 649 which the deceased was allocated is part of this estate and should be distributed here.

[13] Therefore the assets below constitute estate property:

A. NANYUKI MURURA BLOCK 8/1121 measuring 0.8 Ha/ 1.97Acres

B. LR. KIBIRICHIA/KIBIRICHIA/649 measuring 5.39 Acres

C. KENYA GRAIN GROWERS CO-OPERATIVE UNION AND CASH IN BANK

[14] As I stated earlier, Joshua was gifted 5.03 acres in both LR NO 1989 and 469. By supporting the proposal by the petitioner, it means he is not claiming anything in the net estate. That notwithstanding, in all fairness, order that he will not partake in the net estate property. Hellen and Esther has the least. This is an era of equality and non-discrimination and when I take the foregoing into consideration estate property shall be distributed as follows:

1. NANYUKI MURURA BLOCK 8/1121 measuring 0.8 Ha/ 1.97Acres Shall be shared equally between Esther Wanja Jamleck and Hellen Gakii Kiara

2. LR. NUMBER KIBIRICHIA/KIBIRICHIA/649 the part measuring 5.39 Acres shall be shared equally among:

- 1. Leah Nkirote Jamleck**
- 2. Esther Wanja Jamleck**
- 3. Hellen Gakii Kiara and**
- 4. Henry Gatobu Kiambati**

3. KENYA GRAIN GROWERS CO-OPERATIVE UNION AND CASH IN BANK shall be shared equally among:

- 5. Leah Nkirote Jamleck**
- 6. Esther Wanja Jamleck**
- 7. Hellen Gakii Kiara and**
- 8. Henry Gatobu Kiambati**

[15] The grant is confirmed on foregoing terms. I order each party to bear own costs. It is so ordered.

Dated, signed and delivered in open court at Meru this 1st day of November 2018

F. GIKONYO

JUDGE

In presence of

Muthomi for 1st petitioner

Kimathi for beneficiaries

Kithinji for Murango for 2nd petitioner

Parties and beneficiaries present

F. GIKONYO

JUDGE