



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

SUCCESSION CAUSE NO. 105 OF 1996

IN THE MATTER OF THE ESTATE OF GEOFFREY NGARUTHI MURUGU (DECEASED)

ALEXANDER MUGAMBI NGARUTHI.....PETITIONER

VERSUS

WALLACE GITONGA NGARUTHI.....1ST PROTESTER

SOLOMON MBAE NGARUTHI.....2ND PROTESTER

SILVIA MUKWANYAGA..... 3RD PROTESTER

HELLEN KAARI.....4TH PROTESTER

JANE WANJA 5TH PROTESTER

JUDGMENT

[1] **Geoffrey Ngaruthi Murugu** (“the deceased”) died intestate on 6th January 1989. On 13th July 1995. The Chief of Chogoria Location wrote a letter of introduction setting out the following as the deceased dependants;

- a. **Rael Nau Geoffrey (widow),**
- b. **Silvia Mukwanyaga Geoffrey,**
- c. **Justus Riungu M’Ngaruthi,**
- d. **Alexander Mugambi Ngaruthi,**
- e. **Wallace Gitonga Ngaruthi,**
- f. **Solomon Mbae,**
- g. **Hellen Kaari Ngaruthi,**
- h. **Charity Gatakaa Ngaruthi,**
- i. **Catherine Kagendo Ngaruthi nad**
- j. **Jane Wanja Geoffrey.**

[2] Alexander Mugambu petitioned for, and was granted letters of administration of the deceased estate on 30th June 1997. He Listed Land Reference No. **MWIMBI/CHOGORIA/52** (measuring about 4.4 Ha) and **MWIMBI/ CHOGORIA/765** (measuring about 0.36 Ha) as the assets of the deceased.

[3] Geoffrey Riungu applied to the court vide Chamber Summons dated 16th October 1997 seeking leave to file an objection out of time. In his affidavit he averred that the petitioner secretly and without the knowledge of any family member, filed this succession cause. Through his affidavit and in support of the application, Wallace Gitonga Ngaruthi averred that the petitioner filed this succession case in secret and Geoffrey should have been the one to file this succession cause as he was the eldest son of the deceased.

Protest

[4] On 10th June 1997 the petitioner filed an application seeking confirmation of the temporary grant of letters of administration. However, an affidavit of protest sworn by Geoffrey Riungu Ngaruthi on 18th August 2000 was filed. His major argument was that the petitioner excluded their mother and Catherine Kagendo beneficiary intending to deprive them of their rightful share.

[5] On 16th October 2000, **Catherine Kagendo Ngaruthi** also swore an affidavit of protest against the confirmation of grant and averred that the petitioner excluded her in the said application on the basis that she was married, thus, intending to deprive her of what is hers. She was supported by **Solomon Mbae Ngaruthi** who also deposed to same facts.

[6] On 28th October 2000 **Rael Nau Geoffrey** also filed an affidavit in protest and averred that the distribution proposed by the petitioner excluded her name from the list of beneficiaries intending to deprive her of her right and that for a fair and just distribution. She proposed that Geoffrey Riungu should be granted letters of administration of the estate.

[7] On 27th November 2006, Silvia Muukwanyaga, Jane Wanja and Hellen Kaari filed affidavits of protest. Their complaint was similar to that by the other protestors to the effect that the petitioner did not include their names in the confirmation of grant and therefore they will be disinherited.

Petitioner: daughters were married

[8] The petitioner in his replying affidavit dated 11th December 2006 deposed that at the time of his father's death all his daughters were married except Jane Wanja. The deceased left no property for his daughters and he had set how the sons would claim the dowries from their daughters. He refuted the claim that this cause was filed secretly as false as the protestors had attended court several times and could have objected if they so wished. He stated that the deceased gave Justus Riungu MWIMBI/ CHOGORIA/722, Wallace Gitonga CHOGORIA/765 and Solomon Mbae CHOGORRIA 52 to share with him.

Viva Voce Evidence by protestors

[9] *Viva voce* was adduced. PW1 **Hellen Kaari** told the court that the deceased had three pieces of land namely, MWIMBI/CHOGORIA/ 722,765 and 52. The Deceased gave MWIMBI/CHOGORIA/722 to Justus Riungu which she has no claim on. However MWIMBI/ CHOGORIA/52 is occupied by Solomon Mbae and Alexander Mugambi who holds the larger portion. She recalls that before the death of the deceased he convened a family meeting and told them that his property belongs to all his children and the proceeds for the sale of coffee and tea should be used to their benefit including his grandchildren. Alexander has however denied them access to the said property. Additionally, she believes that the deceased property should be shared equally amongst them.

[10] PW2, Jane Wanja Geoffrey confirmed the testimony of PW1 that the deceased intended his estate to be shared equally among the beneficiaries. She also reiterated that Solomon Mbae and Alexander Mugambi are in possession of CHOGORIA/52. She added that the chief had called them years ago and they agreed to share their father's estate equally. Her claim is only on MWIMBI/CHOGORIA/52 and 765. PW2 also confessed that she was not aware that Wallace Gitonga is intending to sell MWIMBI/CHOGORIA/765.

Petitioners Case

[11] The petitioner DW1 Alexander Mugambi testified and said that all of them went to the chief as regards to this matter and obtained a letter dated 13th July 1995. That at that point no one opposed that he should file this succession matter. He alleged that because of the legal fees of this case his children have been forced to drop out of school. Additionally, he told the court that his father did not leave any property to his daughters. Before his death he distributed all his properties to his sons. He told the court that his brother Wallace had already entered into an agreement for the sale of MWIMBI/CHOGORIA/765 and produced a copy of the sale agreement in support of his claim.

Analysis and Determination

[12] From the record, evidence and submissions by the parties, issues that emerge for determination by the court are

a. Whether the deceased daughters have a right to inherit from his estate?

b. How the estate should be distributed?

Right of daughters

[13] The Petitioner stated that his sisters were not given any property by the deceased and that they are all married. For those reasons, he has taken the view that they are not entitled to inherit any portion of the estate of the deceased. These arguments smell of pure discrimination of daughters of the deceased on the basis of gender and status; a position that is totally in contravention of **Article 27** of the **Constitution** which prohibits any form of discrimination based on race, sex, marital status or culture. **Article 27(3)** of the **Constitution** specifically

provides that;

'Women and men have the right to equal treatment, including the right to equal opportunities in political, economic, cultural and social spheres'.

[14] **Section 29(a)** of the Law of Succession Act in recognizing '**children**' of the deceased as dependants and it does not provide for any classification of children as sons, daughters, married or unmarried. I am content to cite the case of **Re Estate of Solomon Ngatia Kariuki (deceased) (2008) eKLR** where Makhandia J stated that:

“The Law of Succession Act does not discriminate between the female and male children or married or unmarried daughters of the deceased person when it comes to the distribution of his estate. All children of the deceased are entitled to stake a claim to the deceased's estate. In seeking to disinherit the protestor under the guise that the protestor was married, her father, brothers and sisters were purportedly invoking a facet of an old Kikuyu Customary Law. Like most other customary laws in this country they are always biased against women and indeed they tend to bar married daughters from inheriting their father's estate. The justification for this rather archaic and primitive customary law demand appears to be that such married daughters should forego their father's inheritance because they are likely to enjoy inheritance of their husband's side of the family.”

[15] And, now it is abundantly clear that the Constitution dealt the final fatal blow on all forms of discrimination against women on account of gender and status; and it is the Certificate of Death of discrimination which everyone met with discrimination should produce as proof of death thereof. The arguments by the petitioner have no place in modern society. I reject them and declare that all children of the deceased have equal rights to inherit the estate of their late parents.

Distribution

[16] Now I move to distribution of the estate of the deceased. I am guided by the **Constitution** and the **Law of Succession Act**. An examination of the proceedings reveals that the daughters have not inherited any portion of the estate of the deceased. Only the sons have benefited. The beneficiaries in this case all agree that before the demise of the deceased, he gave MWIMBI/CHOGORIA/722 to Justus Riungu. I note also that through their own admissions Solomon Mbae and Alexander Mugambi have taken possession of MWIMBI/CHOGORIA/52. It was also revealed that Wallace Gitonga intends to sell MWIMBI/CHOGORIA/765 (see MF1 2). Such sale of land before confirmation of grant is null and void, and is intermeddling with the estate of the deceased and may attract criminal charges under section 45 of the Law of Succession Act. As for gift inter vivos to Justus Riungu, **Section 42** will come into play. The section provides:

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, that property shall be taken into account in determining the share of the net intestate estate finally accruing to the child, grandchild or house.**

[17] On the basis of the foregoing, this court finds the mode of distribution suggested by Catherine Kagendo to be fair and just. Accordingly:-

A. MWIMBI/CHOGORIA/722- will go to the *Estate of Justus Riungu Wholly*

B. MWIMBI/CHOGORIA/765- to Wallace *Gitonga Ngaruthi wholly*

C. MWIMBI/CHOGORIA/52 will be shared thus:

- a. Silvia Mukwanyaga Geoffrey - 1 acre**
- b. Charity Gatakaa Ngaruthi - 1 acre**
- c. Hellen Kaari - 1acre**
- d. Catherine Kagendo Ngaruthi - 1 acre**
- e. Jane Wanja Geoffrey – 1acre**
- f. Wallace Gitonga Ngaruthi – 1.01acre**
- g. Alexander Mugambi Ngaruthi -1.85 acres**
- h. Solomon Mbae - 1.85 Acres**

[19] The grant herein is confirmed in the foregoing terms. I make no order as to costs for these proceedings involve members of the same family. It is so ordered.

Dated, signed and delivered in open court at Meru this 11th day of December, 2018

F. GIKONYO

JUDGE

In presence of

Karanja for Kaumbi for petitioner

Mutugi- Objector

F. GIKONYO

JUDGE