



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MERU
SUCCESSION CAUSE 152 OF 2006
IN THE MATTER OF ESTATE OF M'MARETE M'RINGERA -DECEASED
SAMUEL MUGAMBI.....PETITIONER

RULING

This cause relates to the intestate estate, of M'MareteM'Ringera who died on 13th December 1997 while domiciled at Kithirine East Location within Meru County.

According to the chief of Kithirine East Location in his letter dated February 2006 the deceased was survived by:-

1. Erastus KirimaniaMarete
2. Stephen MugambiM'Marete
3. Samuel Mugambi
4. Geoffrey KabitiM'Marete

The only property making up net intestate estate is indicated as Abothuguchi/Kithirine/490 measuring 1.05 Ha.

Samuel Mugambi petitioner for Letters of Administration to estate but Jennifer KathureMarete applied revocation of grant of Letters of Administration made to the petitioner on 19th September 2006 on the ground the petitioner had left her name and other beneficiaries out of the succession cause. She gave names of those left out as:-

1. JennifferKathure
2. Julia Mukonjau
3. Stanley Kirimi – grandson to the deceased.
4. Paul Kinyua – Grandson

She said plot no. 27 Nturukuma market had also been left out. She said she had a house on suit land and that the deceased had left out some properties for his grandsons who were living and farming on suit land

property prior to the death of the deceased. She said the petitioner intended to sell the land and had received part payment for the portion where her house is situated and that will leave her destitute.

The Petitioner in Replying Affidavit sworn on 7th May 2007 and averred that the deceased had distributed his estate prior to his death and everyone knew his/her portion. He said he consulted clan members and all members of the family and consent was given that he petitions for Letters of Administration as eldest son of the deceased.

He admitted that the objector namely Jennifer Kathure is his sister as well as Julia Mukonjera and Regeria Marete who is deceased. He said Stanley Kirimi and Kinyua Paul are grandsons to the deceased and should inherit through their parents and not directly from deceased persons estate. He averred that he constructed the houses for the applicant and her sons to live before she got married and her sons went to live with their fathers and that she should not lie that the house is hers.

He said he paid for the education of Objector and her sons. He said clan elders advised him to leave out the names of the objectors and her sisters as they are not beneficiaries. He said the objectors application is an afterthought as this cause was duly gazetted and no objection was filed. He sought that application for revocation of grant be dismissed and costs be awarded because it has no merit. Geoffrey Kabiti in further Replying Affidavit said the deceased had effectively distributed his estate prior to his death to deserving and/or legal beneficiaries and each had known portions. He said petitioner was advised by clan elders to leave out names of the daughters of the deceased as they had long been married and had no justifiable claim over the estate. He said application by Jennifer contains falsehoods, intended to hoodwink the court and cause divisions and enmity among the family members. He said the application should be dismissed and grant made to Samuel Mugambi on 25th September 2006 be confirmed so that beneficiaries can take their legal possessions.

The petitioner by an application dated 12th July 2018 sought that Stanley Kirimi Marete be restrained from intermeddling with the estate by trespassing. Constructing, cutting down trees or in any way interfering with L.R. No. Abothuguchi/Kithirine/490 until the application and cause herein is determined.

In the supporting affidavit the petitioner/Administrator said that L.R. No. Abothuguchi/Kithirine/490 was given to the 4 sons of the deceased who will be getting $\frac{3}{4}$ of an acre each and that the objector/applicant to application for revocation who is mother to Stanley Kirimi and his brother were each given one acre of land in P.No. Nturukuma/27 which the deceased acquired through his coffee shares and therefore has no right to intermeddle with the estate of the deceased.

Grant that was made to Samuel Mugambi on 25.9.2006 was revoked on 11.10.2018 and Erastus Kirimana and Jennifer Kathure made joint Administrators. They were given upto 8.11.2018 to record consent on distribution or file separate proposals if agreement is not reached.

On 8.11.2018 Ms Soy for petitioner said no agreement had been reached. Mr Gikunda Advocate for Objector informed court parties had agreed to share the estate equally but on reaching court had changed their minds and wanted the court to determine the distribution.

The law on distribution of estate is provided for under S.35 of the law of succession. The constitution of Kenya 2010 also provides at Article 27 that no one should be discriminated on account of gender and therefore this court finds that the just and fair manner of distribution as per the law and the constitution is that the estate which is made up of one piece of land namely Abothuguchi/Kithirine/490 should be shared equally amongst the beneficiaries/Dependants of the deceased herein. There shall be no orders as to costs.

HON A. ONG'INJO

JUDGE

6.1.2.2018

Before Adwera J

Kinoti – C/A

Applicant/petitioner – N/A

Objector – present in person

Respondent – present in person

Court

Ruling delivered dated and signed in court on the 6th Day of December 2018

HON A.ONG'INJO

JUDGE