



**REPUBLIC OF KENYA**

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

**SUCCESSION CAUSE 50 OF 2006**

**IN THE MATTER OF ESTATE OF M'NKANATA M'IKIARA -DECEASED**

**SABELLA KAGENDO.....APPLICANT**

**VERSUS**

**STEPHEN NKANATA IKIARA.....RESPONDENT**

**RULING**

The deceased M'Nkanata M'Ikiara M'Imwere's is shown intestate estate have been distributed on 16<sup>th</sup> April 2008 as per certificate of confirmation.

The records show that consent was entered into on 2<sup>nd</sup> July 2001 where Justice Lenaola allowed application for confirmation dated 29<sup>th</sup> June 2001 as per the consent dated 25.5.2001.

The distribution was as follows:-

1. George Muthomi Nkanata gets
  - a) 1 acre out of LR Nkuene/Katherea/1763
  - b) 4 acres out of L.R. Mitunguu no. 100
  - c) He is not getting any of the many shares that deceased had purchased.
2. Beatrice Nkanata is to get
  - a) 2 acres out of LR Nkuene/Kathera/1763 to share with her daughters.
    - Joyce Kanaranenu
    - Hellen Kajuju
    - Rose Kinanu
3. Julius Mutembei is to get
  - a) 1 acre out of L.R Nkuene/Kathera/1763
  - b) L.R. Mitunguu No. 100- 4 acres
  - c) Half of shares at Standard Chartered Bank.
  - d) Half shares at East Africa Breweries share certificate No. 56504
  - e) Half shares at Co-operative Bank no. 61487

- f) Half shares at Maize Mill Nkuene Farmers Co-operative Society share no. 0246-01-0203
  - g) Half share at Co-operative Bank Ltd – NO 9755
4. Zablon Gitonga –
- a) 2.95 acres out of L.R Nkuene/Kathera/1763
  - b) 1 acre out of L.R. Mitunguu 100
5. Veronica Nkanata gets
- a) 1 acres out of L.R. Nkuene/Kathera/1763
  - b) 1/3 of plot No. 49 Nkubu Market.
  - c) Shares at Imenti Tea Factory No. B10716
  - d) KTDA Farmer Member No. K 00640061
  - e) Nkuene Consumer HCS Ltd share No. 833
  - f) KTDA Farmer Co. Ltd share No. 37212
6. Paul Muthuri
- a) 8 acres out of L.R. Mitunguu No. 100.
  - b) 0.023 Ha – Mitunguu Market No. 478.
7. Stephen G. Nkanata
- a) 3 acres out of L.R. Nkuene/Kithunguri/268
  - b) Half shares out of Standard Chartered Bank Certificate No. B1001148517
  - c) EAB Ltd - Half shares certificate No. 099192
  - d) (i) KBL shares certificate No. 00349203
  - (ii) NBK share certificate No. 56504
  - e) Co-operative Bank Ltd Class B. Share No. 61487
  - f) Maize Mill Nkuene Farmers Co-op sacco Ltd.
  - g) Co-op Bank Ltd share No. 9755 – Half
8. Francis Kiogora got
- a) 3.3 acres out L.R. Nkuene/Kithunguri/268
9. Jacob Kinoti Nkanata
- a) One acre out of L.R. Ngobit/Subuko/Block 5/173
  - b) Shares at Mt Kenya Milk plant Meru central no. 3930 – whole
10. Judith Gacheru – 1.50 acres out of L.R. Ngobit Subuko/Block 5/173.
11. Lydia Karai Nkanata –
- a) 1.50 acres out of L.R. Ngobit Subuko Block 5/173

12. Florence Nkatha – plot no. 39 B/V Nkubu Market.
13. Grace Gakii – 1/3 share plot No. 49 A Nkubu market
14. Sabella Kagendo – 1/3 out of plot no. 49 – Nkubu market
15. Charity Nkanata – share no. 0000200 at Meru Ginnery 1994 Ltd.

Sabella Kagendo said that the distribution was inequitable and that when she signed what the Administrators told her to sign it she was made to understand that it was to enable their step mother to be given 2 acres of land and not to distribute other properties in the estate.

She said there was a property which was not included in the list of assets. She said when she went to the office of the advocate the secretary gave her a paper to sign against her name but it didn't have any proposed distribution and that they didn't appear before any advocate. Sabella said she was never called to court for confirmation and that she only saw certificate of confirmation with her brother's wife. She said it was upper Kithangari/419 which had been left out of the list of assets. She said she wanted consent order varied and estate redistributed afresh because others have benefited unfairly.

She said his brother Mutembei cheated her that if she withdrew the case he would give her land but it was conditional that she withdraws first. She said she earns Kshs 17, 333 from the plot at Nkubu per month and her mother and sister get 9000/= monthly. She said she came to court when she realized her father's estate had been distributed inequitably. She said when she signed she was not told it was a consent she was signing.

Judith Gaceri Nteere who also supported application for revocation and who was provided with 1 ½ acres only out of L.R. Ngobit Subuko/Block 5/173 said that distribution of her father's estate was unacceptable considering the net intestate estate. She said Stephen Nkanata gave himself the largest share of the estate and the little she was given was in a desert. She said if her brothers insisted on having larger shares then it is okay.

She said in cross examination that she was satisfied with what she had. She said she was accepting what she got because the case had taken long.

Lydia Karai also recorded a statement in support of the application for revocation. She said distribution was not fair. She said she filed an affidavit withdrawing the application and her statement because it had brought disunity in the family and she wants to foster peace.

The petitioner Stephen Nkanata testified and said that all beneficiaries signed consent to distribution after he explained to them why they were signing and they understood and were satisfied. Stephen said he provided for himself 3 acres of land. He said the plot which was given to Sabella had higher value than the land he got. He said the Nkubu plot was given to 3 daughters. Stephen said he executed the wishes of his father.

The 2<sup>nd</sup> petitioner Veronica Nkanata said the deceased had shared his land and all children were satisfied. She said the deceased didn't leave any property to Sabella the applicant herein. She said she knew she would provide for her a portion from her share. She said Sabella got a plot from mitunguu but she declined. She said the land in Nkubu is her matrimonial home and she is to share the plot with Sabella and Gakii.

She said she wants to give Sabella her own land in Meru. She said she will give applicant ¼ an acre on condition she doesn't sell. Margaret Wanjiru Francis testified that she bought land from Lydia Karai and it was transferred to her. From the evidence on record of the applicant and her 2 sisters it is obvious that the distribution favored the 2 petitioners and one widow and some sons of the deceased who are in the minority. The provisions made to the daughters and the 2 widows is made to feel like a favour being done to them rather than entitlement as beneficiaries and/or her is to the deceased.

As a result Judith Gaceri and Lydia Karai who had supported application for revocation gave up along the way saying if the brothers insisted on having what they had taken, they were okay with it, if only to foster peace.

This court finds that the applicant Sabella Kagendo has proved that although they appended signatures against their names they did it under the believe that it was to authorize their step mother Beatrice Naitore to be given 2 acres of land and not for purposes of distributing the estate.

The inequitable distribution that given a lion's share to the same of the beneficiaries is evidence of the unfair and unacceptable mode of distribution. Prior to recording of the controversial consent, the application for confirmation had been for quite some time from early 2006 with a view of negotiating and recording consent. By 19<sup>th</sup> February 2007 parties had not reached an agreement on distribution. It was on 4.5.2007 that the court was told parties had signed consent. The court noted it was not clear what was being compromised and another mention date was taken for clarification.

On 2.7.2007 when matter came up to clarify what was being compromised the court didn't revisit the issue of clarification but recorded the consent.

This court is of the view that the alleged consent to distribute the estate went against the grain and spirit of section 35(5) of the Succession Act which provides for division of the intestate estate among children in equal shares and it was wrong for Veronica Nkanata and Stephen Nkanata to discriminate against the daughters of the deceased in the distribution of the estate as this is also against Article 27 of the constitution of Kenya 2010 which treats everyone equally before the law.

Veronica Nkanata the widow of the deceased who gained most said that her deceased husband had shared his land to the children. She however admitted that Sabella the applicant got nothing. This cause was filed as an intestate estate and the issue of the deceased having wished his estate to be shared in any manner does not arise. It is true that the paper which bears signatures doesn't show what was being signed for and the Administrator has not controverted the claim that he duped his sisters into giving to himself the lions share out of the fathers estate. Stephen Nkanata has not explained criteria used to give the sons land for agricultural use and the daughters only a plot to share. He has not explained why none of the daughters benefitted from the shares bought by the deceased. The claim by Stephen Nkanata that the plot given to Sabella was more valued than his 3.3 acres does not add up because he has not proved that distribution was done according to value of property.

There is parcel of land No. upper Kithangari/419 which the Administrator has failed to lead any evidence towards. It was claimed to have been left out of the list of the assets and Stephen Nkanata the Administrator is quiet about it. There is need to establish the status of that particular parcel of land and there is need to review the mode of distribution so that if Stephen and Julius Mutembei are to get all the shares it is done in a transparent manner with full knowledge of all the beneficiaries knowing the value of those shares.

There is also need to take stock of all the parcels of land that were in the name of the deceased including where they have been sold and come to terms with why some beneficiaries are to get agricultural land and other plots. To that extent the estate will be administered by Sabella Kagendo and Stephen Gituma.

Those who benefitted from shares should be ready to surrender some so that atleast each beneficiary benefits from them without necessarily having equal shares. Application allowed.

Orders accordingly.

**HON. A.ONG'INJO**

**JUDGE**

**RULING SIGNED, DELIVERED AND DATED THIS 6<sup>th</sup> DAY OF December 2018.**

**In the presence of:**

C/A: Kinoti

Applicant:- Mr. Gikunda holding brief for say objector

Respondent:- Ms Kiome Advocate for petitioner. M. 24.1.2019 for further directions.

**HON. A.ONG'INJO**

**JUDGE**