



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MERU
SUCCESSION CAUSE 445 OF 2013
IN THE MATTER OF ESTATE OF M'ARACHI M'MWIRICHIA -DECEASED

ANGELINA MWIRIKI M'TIARUCIA

JEFITHA KATHURIMA.....PETITIONERS

RULING

By an application dated 1st December 2014, Angelina Muriuki and Jefitha Kathurima sought that grant made to them on 15th October 2013 be condirmed.

The affidavit in support of confirmation is signed by only one Administrator Angelina Muriuki who proposed mode of distribution at paragraph 13. She sought in the affidavit that the inhibitions placed/lodged on L.R Ntima/Igoki/5306, 5307 and L.R. Nyaki/Giaki-Kiburine/102 to be removed to enable her carry on with transmission process once grant is confirmed.

Jefitha Kathurima the 2nd petitioner filed an affidavit in protest to the proposed mode of distribution and claimed that since the deceased had left a will the same should be followed. The protest was canvassed by viva voce evidence. The 2nd petitioner is grandson to the deceased from his son M'Tuerandu M'Arachi. He said that the land in Nkunga and Ntima should be distributed according to the will of the deceased and the only parcel that remains for distribution intestate is the land in Nyaki/Gaiaki/102 – measuring 16 acres. He said the deceased persons daughters were married and he didn't give them any land. He said the land in Nkunga is occupied by his aunt 1st petitioner and her 3 brothers. He said the land at Nkunga belonged to Angelina's mother.

He said he didn't know particulars of land in Nkunga and he didn't know how it was acquired. He said he had not provided the original will which was in Kimeru language. He said that the will was drawn when his grandfather was in hospital. He said he was not present when the will was drawn. He said that deceased called his sons and daughters to the hospital and the will was written. He said the person who wrote the will was not in court.

He said the will does not specify that land in Nkunga belonged to the deceased. He said the will should be followed even though daughters were not provided for. He said Gikunda was given land and his family had developed area they were given. He said the will indicates Gikundi Mbogori should get 2 acres in Kiburine. Protester said his father got the largest share and has same land in Nkunga and that is why he wants only 2 acres from Kiburine. He said 2 witnesses to the will were alive and he intended to call them as witnesses.

law. She said her mother in law was separated from the deceased long before she got married.

Julius Mubichi the son of the deceased also recorded a statement and said that his portion of land at Ntima/Igoki was sold to David and should be given title so he can transfer the same.

He gave his proposal for distribution of LR Nyaki/Giaki- Kiburine/101 as follows:-

1. Each son 1 acre = 5 acres
2. Children of deceased persons sisters – one acre
3. John Mbogori – 4 acres
4. Daughters in 2nd house – 2 acres to share equally
5. Daughters in 1st house 3 acres to share equally.

He said balance of 0.50 acres should be used to reach access roads. Th

The statement of Elizabeth Mataria Mwenda was in support of Julius Mubichi's statement. Both Julius and Elizabeth disputed that the deceased left a written will when he died.

Angelina's proposal in further affidavit is that daughters of the deceased in the 1st house be given 2 acres to share and those in 2nd house to share 1.50 acres. The 1st petitioners advocate filed written submissions whereas the 2nd Petitioner failed to file written submissions. The undisputed facts in this case are that the 2 petitions filed the petitioner herein as an intestate estate and that the only asset remaining free for distribution is LR Nyaki/Giaki-Kiburine/102.

It is also not disputed that the deceased during his lifetime gave his 5 sons Samuel Igweta, Moses Muthuri, M'TueranduM'ARachi, M'TuruchiuM'Arachi and Julius Mubichi parcels of land in Ntima/Igoki and whereas Samuel Igweta, Moses Muthuri and M'Tuerandu got their shares transferred to them, Julius Mubichi and M'Tuaruchius portions in LR Ntima/Igoki/5307 and 5306 respectively remained untransferred although they are in occupation. It was also admitted that John Mbogori the deceased person's son was the only one who didn't get a share of land at Ntima/Igoki and was therefore entitled to a large share than all the rest at the parcel of land in Kiburine. It was also not in dispute that the deceased had settled his sisters son, the late Gikundi on the parcel of land in Kiburine and therefore his family is to be provided for.

Although the beneficiaries herein proposed that the family of the late Gikundi should be given one acre none of the family members were involved in the cause herein and it would be best to establish what area of land they occupy before deciding that they are to be given just one acre of land.

There seems to have been consensus that John Mbogori gets 4 acres out of the land in Kiburine in lieu of what he didn't get in Ntima. What missed at Ntima/Igoki.

The issue for determination is whether what the 2nd petitioner and Moses Muthuri claimed to be the last will and testament of the deceased was a valid will particularly in consideration that it didn't provide for all the beneficiaries and dependants of the deceased.

The will was allegedly written when the deceased was in hospital and Moses Muthuri who claimed he was present when the will was written said that the person who wrote the will was the area Manager and had died. This can't be said to be valid will considering the deceased was on his death bed and therefore not in the best state of mind to make reasonable and informed decision. The fact that the document does not make reference to the daughters of the deceased whether bequeath or not is a sign the will is invalid. If he left them out knowingly he ought to have given reasons as to why.

John Mbogori the son of the deceased protester herein disowns the alleged will. The fact that Moses Muthuri, a beneficiary of the estate alleges to have been present when the will was made invalidates the document totally.

In distributing the only asset in the estate priority will have to be given to the deceased persons children who didn't get any benefit during the lifetime of the deceased namely

1. John Mbogori and it is agreeable he gets 4 acres out of LR Nyaki/Giaki- Kiburine/102
2. The deceased Gikunda nephew to the deceased – one acre for his wife and children
3. Elizabeth Materia- one acre
4. Julia Mwari – one acre
5. ThioriM'Arachi – one acre
6. Evangeline Kinya – One
7. Veronica Kanyua – one acre
8. Karimi Kimathi – one acre
9. KagwiriaM'Arachi – one acre
10. M'TueranduM'Arachi – Ntima/Igoki/5310 – to wife and children to share equally
11. Julius Mubichi – LR. Ntima/Igoki 5307 to be transmitted to him.

The balance of the 2 acres remaining to be shared equally amongst the sons of the deceased who had benefitted from the land in Ntima/Igoki.

There shall be no orders as to costs.

HON. A.ONG'INJO

JUDGE

6.12.2018

Before Adwera Ong'injo J

Kinoti –C/A

1st petitioner

Ms Wambugu holding brief for Ntarangwi for petitioner.

Ms Kiogora Mugambi for objector

2nd petitioner – present in person

1st petitioner – present in person

Protester – present in person

Court

Ruling delivered, dated and signed in court on the 6th day of December 2018.

HON. A.ONG'INJO

JUDGE