



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MERU
SUCCESSION CAUSE NO.108 OF 2014

In the Matter of the Estate of M’Ngarithi M’Miriti alias Paul M’Ngarithi M’Miriti (Deceased)

MONICA KARURU]
ZIPPORAH KATHAMBIM’NGARUTHI]
JACINTA WAIRIMU KARIUKI].....PETITIONERS

JUDGMENT

Distribution of estate and confirmation of grant

[1] Before me is a Summons dated 13th December, 2014 for Confirmation of Grant of letters of administration to the Estate of M’Ngarithi M’Miriti alias Paul M’Ngarithi M’Miriti (Deceased). The Grant to be confirmed was issued on the three petitioners as joint administrators of the estate of the deceased. The Summons is supported by affidavit of Zipporah Kathambi. The 3rd administrator also filed her mode of distribution dated 26th May 2015. Parties are not able to agree on distribution of this estate hence this decision.

Directions

[2] On 23rd May 2016, the court with the consent of parties directed that the Summons dated 13th December, 2014 shall be canvassed by way of written submissions. The 1st and 2nd Administrators were to file and serve submissions within 21 days of 23rd May 2016. And, on such service the 3rd Administrator was to file and serve submissions within 21 days thereof. In compliance with those directions, the 1st and 2nd Administrators filed their submissions. But, by 9th November 2016 when this matter was mentioned before me, the 3rd Administrator had not filed her submissions. M/S Mbaikiata who was holding brief for, explained to court that Mwenda Mwarania has difficulties tracing his file and pleaded with the court to allow Mr. Mwenda Mwarania time to file submissions; the court allowed him to file submissions within 21 days of 9th November 2016. Nonetheless, the court observed that the 3rd Administrator is the source of delay in this case and so also assigned a date for judgment, that is, 7th February, 2017. And, the court warned that, whether Mwenda Mwarania files submissions or not, it will write its judgment on the material filed. At the time of this ruling, I have not seen any submissions by Mwenda Mwarania. That kind of conduct by legal counsel is a complete negation and abdication of the statutory obligation of legal counsels to assist the court attain the overriding objective of the law, that is to say, achieve expeditious disposal of this case. I will, therefore, consider the pleadings and submissions filed in deciding this case.

[3] According to the Petition, the deceased left one estate property namely L.R ABOTHUGUCHI/KATHERI/428. The deceased left the following three children:

- a) MONICA KARURUM'NGARUTHI- Daughter
- b) ZIPPORAH KATHAMBIM'NGARUTHI- Daughter
- c) JACINTA WAIRIMU KARIUKI- Daughter in law

He also left two dependants namely;

- a) Stephen Mbaabu Musa; and
- b) Samuel Murerwa Musa

The 1st and 2nd Administrators confirmed the above in the affidavit in support and their submissions. The totality of paragraph 18 of the supporting affidavit and submissions by 1st and 2nd Administrators is that the estate property should be distributed as follows: the above two dependants to be given 1 acre jointly and the balance thereof to be shared equally amongst the three children of the deceased. They have given their reasons to be that; the three children of the deceased have equal rights to share the estate of their deceased father regardless of their gender or station in life, and that principle of equality is enshrined in the Constitution and section 38 of the Law of Succession Act. They accused the 3rd administrator of several mischief; (1) of discrimination in that she allocated 3.2 acres out of 5.2 acre to herself and her children and only giving each of the two other children of the deceased 1 acre each; (2) of intermeddling in that she illegally and without any legal authority of law or grant of letters, sold part of the estate property to a stranger one David Gikunda M'Ringera; and (3) of distortion of rightful beneficiaries in that she introduced her children as direct beneficiaries of the estate of the deceased at the expense of the children of the deceased. According to the two administrators, the proposal by the 3rd administrator is most unfair and unjust.

[4] The 3rd administrator proposed that; 1 acre be given to the two dependants; 1.6 acres to Murithi Mungania, Faith Nkatha Mungania and Fridah Makena Mungania; and the other 1,6 acres be given to Her, Lucy Wangari and Jane Wanjiku. She did not elaborate on the proposal or the basis thereof.

DETERMINATION

Intermeddling

[5] Before I delve into the distribution of the estate, I should first settle the issue of intermeddling. Courts have said time and again that any person who without the authority of the Law of Succession Act or any other written law or grant of representation, takes possession or disposes of, or otherwise intermeddle with the free property of the deceased is guilty of a criminal offence and is answerable to the rightful executor or administrator of the extent of the assets he has intermeddled with. The 1st and 2nd administrator have alleged that the 3rd administrator without the authority of the law or grant of administration or court sold part of the estate property to a third party one David Gikunda. The 3rd administrator did not respond to those allegations. That notwithstanding, this grant is yet to be confirmed and as such the restriction on distribution of estate's capital or immovable properties under section 55 and 82(b) (ii) of the Law of Succession Act applies. Accordingly, there is nobody yet with authority to sell the estate property herein to any person including David Gikunda. Accordingly, the sale to or acquisition of the immovable property of the estate by David Gikunda is completely in violation of the law, and therefore null and void. Whatever, the 3rd administrator may have attempted to sell is part of the estate to which this proceedings relate and I shall proceed as such. If he is occupation, he shall be evicted forthwith. See **GLADYS NKIROTEM'ITUNGA vs. JULIUS MAJAUM'ITUNGA**[2016] eKLR that

Whereas the law of succession does not define what intermeddling with the property of the

deceased is, there is ample judicial decisions on acts which may amount to intermeddling. For instances, in the case of **BENSON MUTUMAMURIUNGI vs. C.E.O. KENYA POLICE SACCO & ANOTHER [2016] eKLR** the court observed that:

“Whereas there is no specific definition provided by the Act for the term intermeddling, it refers to any act or acts which are done by a person in relation to the free property of the deceased without the authority of any law or grant of representation to do so. The category of the offensive acts is not heretically closed but would certainly include taking possession, or occupation of, disposing of, exchanging, receiving, paying out, distributing, donating, charging or mortgaging, leasing out, interfering with lawful liens or charge or mortgage of the free property of the deceased in contravention of the Law of Succession Act. I should add that any act or acts which will dissipate or diminish or put at risk the free property of the deceased are also acts of intermeddling in law. I reckon that intermeddling with the free property of the deceased is a very serious criminal charge for which the person intermeddling may be convicted and sentenced to imprisonment or fine or both under section 45 of the Law of Succession Act. That is why the law has taken a very firm stance on intermeddling and has clothed the court with wide powers to deal with cases of intermeddling and may issue any appropriate order(s) of protection of the estate against any person.”

See also the case of **MACHAKOSH HIGH COURT CIVIL CASE NO. 95 OF 2001 JOHN KASYOKIETI – vs- TABITHA NZIVULU KIETI & AOTHER** it was held that doing anything affecting the estate of a deceased person amounts to intermeddling. In the case cited, the court considered commencing a suit on behalf of the estate before obtaining a grant of representation to be an act of intermeddling with the estate. Again, consider the case of **GITAU AND TWO OTHERS -vs- WANDAI AND FIVE OTHERS (1989) KLR 231** where it was held that entering into an agreement to sell estate property before getting a grant or without such a grant is an act of intermeddling.

I now move to the other substantive matters.

Discrimination of daughters in inheritance

[6] From the arguments coming through, it is clear issues to do with discrimination based on gender and sex have emerged. There were bad times in the heavily patriarchal African society; that being born as daughter disinherited you. And so, even the judicial journey to liberate daughters from being so down-trodden by the patriarchal society in Kenya on matters of inheritance has been long and painful. As a matter of fact, due to the constitutional architecture of our nation at the time, before 2010, we only saw pin-prick thrusts and rapier-like strokes by courts on these persistent patriarchal biases. But, things changed when **RONO vs. RONO [2008] 1 KLR 803** delivered the downright bludgeon-blow on these discriminatory practices against women in inheritance; it splendidly paid deference to the international instruments against all forms of discrimination against women especially the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). And, I am happy to say that from thence, there are many cases- and the number is rising by the day as courts implement the Constitution- which state categorically that discrimination in inheritance on the basis of gender or sex or status is prohibited discrimination in law and the Constitution. More specifically I am content to cite the proclamation by the Court of Appeal in the case of **STEPHEN GITONGA M’MURITHI vs. FAITH NGIRAMURITHI [2015] eKLR** that:-

“Section 38 enshrines the principle of equal distribution of the net intestate estate to the surviving children of the deceased irrespective of gender and whether married and comfortable in their marriage or unmarried...”

Therefore, a son will not have priority over a daughter of the deceased simply because he is male; all-male and female siblings- are equal before the law and are entitled to equal protection of the law. See article 27 of the Constitution. Accordingly, the 3rd Administrator and her children who are claiming the inheritance of late Festus K. M’Ngaruthi, the son of the deceased are only entitled to the share of their late

father. They are not, in the circumstances of this case entitled to more share than the distinct share of each of the two daughters of the deceased simply because the late Festus M’Ngaruthi was the son. The three children of the deceased are entitled to share the net intestate estate of the deceased equally. I so find and hold. Here I must state that, as a general rule, except where they are direct dependants under section 29(b) of the Law of Succession Act, the grandchildren of the deceased only claim the share of their deceased parent and not in equality or priority to the children of the intestate estate to whom these proceedings relate.

The two dependants

[7] But before I close, one more pertinent matter; all the parties have confirmed that the two dependants, namely, Stephen Mbaabu Musa; and Samuel Murerwa Musa had been settled on 1 acre of the estate property by the deceased during his lifetime. This is the land the deceased had given to their late father Moses M’Mukindia and Jacob Gikunda and is marked distinctly on the ground. I will, therefore, distribute the one acre to them.

Distribution; children to share equally

[8] The upshot of the foregoing analysis is this. I confirm the grant of letters of administration to the 1st and 3rd petitioners in whom, under section 81 of the law of Succession Act all the powers and duties of administrators shall now vest. Distribution of the intestate estate of the deceased comprising in **L.R ABOTHUGUCHI/KATHERI/428**, measuring approximately 5.20 acres shall be as follows:-

a) Stephen Mbaabu Musa; and

b) Samuel Murerwa Musa.....1 acre equally

The balance thereof, to wit approximately 4.20 acres shall be shared equally among:

c) MONICA KARURUM’NGARUTHI;

d) The estate of ZIPPORAH KATHAMBIM’NGARUTHI; and

e) The estate of Festus. K. M’Ngaruthi

The distinct share due to the estate of Zipporah Kathambi M’Ngaruthi shall be held by the administrators herein for the benefit of the said estate and children of the deceased beneficiary who shall share it equally. Similarly, the distinct share due to the estate of Festus K. M’Ngaruthi shall be held by the administrators herein for the benefit of the said estate, the widow and children of the deceased beneficiary who shall share it equally. It is so ordered.

Dated, signed and delivered in open court at Meru this 7th day of February 2017

F. GIKONYO

JUDGE