



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MURANG'A

SUCCESSION CAUSE NO 931 OF 2013

**IN THE MATTER OF THE ESTATE OF MWANGI RURUNGA alias KAMERIA RURUNGA -
DECEASED**

MICHAEL MAINA MWANGI.....1ST ADMIN/APPLICANT

EDSON PETER GITHINJI MWANGI.....2ND ADMIN/PROTESTER

J U D G M E N T

1. A grant of letters of administration intestate to the estate of the Deceased herein (**MWANGI RURUNGA alias KAMERIA RURUNGA**) was on 14th April 2014 made jointly to **EDSON PETER GITHINJI MWANGI** and **MICHAEL MAINA MWANGI**.

2. The 2nd Administrator, Michael Maina Mwangi, subsequently applied by **summons dated 26/09/2014** for confirmation of that grant. His proposals for distribution at paragraph 6 of his supporting affidavit were that the two parcels of land comprising the Deceased's estate be shared as follows –

(i) **LR LOC 15/MUGEKA/364** to be shared equally between –

- MICHAEL MAINA MWANGI (2ND Administrator)
- JAMES IRUNGU MWANGI
- EDSON P. GITHINJI MWANGI (1st Administrator)
- HOLIDAH NJOKI KIMANI

(ii) **LR LOC 15/GAKUYU/620** to be shared as follows –

- JAMES IRUNGU MWANGI.....3.05 acres
- EDSON P. GITHINJI MWANGI (1st Admin).....3.05 acres
- MICHAEL MAINA MWANGI (2nd Admin).....0.35 acres
- HOLIDAH NJOKI KIMANI.....0.35 acres

3. The 1st Administrator, Edson P. Githinji Mwangi, did not agree with those proposals and on 14/11/2014 he filed an affidavit of protest. His counter-proposals for distribution were as follows –

(i) **LR LOC 15/MUGEKA/364** – to go to

- HELINA WANJIRU MWANGI as sole proprietor

LR LOC 15/GAKUYU/620 to be shared as follows –

- HELINA WANJIRU MWANGI.....1.9 acres
- JAMES IRUNGU MWANGI.....2.4 acres
- EDSON P. GITHINJI MWANGI (1st Admin).....2.4 acres

4. Upon directions of the court, the summons for confirmation of grant was heard by way of oral evidence. The 2nd Administrator/Applicant testified and did not call any witness. Similarly the 1st Administrator/Protector testified and did not call any witness. The court called one ESAU MWANGI, the widower of a deceased daughter of the Deceased. He stated that he and his children did not want anything in the Deceased's estate.

5. In the course of hearing the court was informed that another daughter of the Deceased, HELINA WANJIRU MWANGI, had also died. She was survived by children. I am satisfied upon the affidavit of one of her children, MARGARET WAMBUI MAINA, filed on 25/10/2016, that indeed Helina Wanjiru Mwangi died in the course of these proceedings and was survived by children.

6. I have considered the testimonies of the witnesses. The following facts are not in dispute –

- (a) The Deceased died intestate on 26/02/1984.
- (b) The Deceased was survived by the following children –
 - (i) JAMES IRUNGU MWANGI
 - (ii) MICHAEL MAINA MWANGI (2nd Admin)
 - (iii) HOLINDA NJOKI KIMANI (widow of a deceased son)
 - (iv) EDSON P. GITHINJI MWANGI (1st Administrator)
 - (v) HELINA WANJIRU MWANGI (since deceased but survived by children)
 - (vi) AGNES WAMBUI MWANGI
- (c) The Deceased gave a parcel of land (each measuring 2.69 acres) to two sons of land each to two sons as gifts *inter vivos* as follows –
 - LR LOC 15/GAKUYU/1883: to 2nd Administrator
 - LR LOC 15/GAKUYU/1884: to Kimondo (now in his widow's – Holinda's – name).
- (d) At his death the Deceased's estate comprised two parcels of land –
 - LR LOC 15/MUGEKA/364 measuring approx. 0.44 acres
 - LR LOC 15/GAKUYU/620 measuring approx. 6.96 acres.

7. In his testimony the 2nd Administrator/Applicant stated that Helina should not get anything in her father's estate. His reason was that she was married and that the Deceased had said that she would be given somewhere to build a house in the event that she was divorced and returned home. Apart from his say-so the 2nd Administrator did not lead any evidence of the alleged wishes of his father. He also revised his proposal for distribution in respect to parcel No 620 and stated that the four surviving children

of the Deceased (that is excluding Helina) should also share that parcel equally.

8. However, in cross-examination he acknowledged Deceased's gifts *inter vivos* to himself and to Kimondo and reiterated what he stated in his supporting affidavit – that is, that he and Holinda (his elder brother Kimondo's widow) should get only 0.35 acres each in parcel No 620 so that finally everyone will have gotten an equal share in the overall estate of the Deceased.

9. On his part, the 1st Administrator/Protestor reiterated his proposals for distribution contained in his affidavit of protest. He stated that his proposals catered for all children of the Deceased except AGNES WAMBUI MWANGI whose widower stated to court he and his children did not want anything in the estate. He further stated that his proposals took into account the gifts *inter vivos* to the 2nd Administrator and another son, and that everybody entitled will thereby have gotten equal shares in their father's overall estate. The 1st Administrator also stated that Helina was not married.

10. Margaret Wambui Maina, in her affidavit filed on 25/10/20126 regarding her mother, Helina's, death also stated in the affidavit that Helina was not married and that she was survived by children as follows –

- (i) Peter Rurinja Kamera (deceased but survived by his widow Kezia Wachera Matu)
- (ii) Lucy Wanjiku Mugeci
- (iii) Margaret Wambui Maina
- (iv) Alexander Githinji Mugeci

She proposed that the whole of parcel No. 364 and some 1.9 acres out of parcel No. 620 should be Helina's share to be shared equally by her children.

11. The Deceased was, in effect (after excluding AGNES WAMBUI), survived by five (5) children. Michael Maina Mwangi (2nd Administrator) and Holinda (widow of a son of the Deceased) had from the Deceased gifts *inter vivos* of 2.69 acres each.

12. Parcel LR LOC 15/MUGEKA/364 measures 0.44 acres. Parcel LR Loc 15/GAKUYU/620 on the other hand measures 6.69 acres. If you add the acreage of the two gifts *inter vivos* the overall estate of the Deceased therefore measured 12.51 acres.

13. Under section 38 of the Law of Succession Act, Cap.160,

“Where an intestate has left a surviving child or children but no spouse, the net intestate estate shall, subject to the provisions of sections 41 and 42 devolve upon the surviving child, if there be only one, or shall be equally divided among the surviving children.”

14. In the present case, the Deceased will be deemed to have been survived by 5 children as, in effect, the sixth child does not want a share of the estate. If you divide 12.51 acres by five you will get 2.5 acres. That would be the entitlement of each of the Deceased's children to their father's overall estate.

15. It will then be seen that Michael Maina Mwangi (the 2nd Administrator/Applicant) and Holinda (son Kimondo's widow) already have more than their share of the estate in the gifts *inter vivos*. So, only James Irungu Mwangi, Edson P. Githinji Mwangi (1st Administrator/Protestor) and Helina Wanjiru Mwangi should share the two remaining parcels, LR LOC 15/MUGEKA/364 (measuring 0.44 acres) and LOC 15/GAKUYU 620 (measuring approximately 6.69 acres).

16. It is common ground between these three that Helina should get outright LR LOC 15/MUGEKA/364 and an additional piece from LR LOC 15/GAKUYU/620. The combined acreage of these two parcels is 7.13 acres. Divide that by three and each should get 2.38 acres. Helina will already have 0.44 acres

(parcel No 364). She should therefore get an additional 1.94 acres from LR LOC 15/GAKUYU/620. The remainder of parcel No 620 (which is 4.75 acres) will be shared equally by James Irungu Mwangi, Edson P. Githinji Mwangi and Helina Wanjiru Mwangi. As Helina is now deceased, her share will go equally to her children surviving her.

17. In summary therefore I hold and declare –

(i) Michael Maina Mwangi (2nd Administrator) and Holinda Njoki Mwangi already have their shares of the Deceased's overall estate in the gifts *inter vivos* each got. They are therefore not entitled to any share in the net estate of the Deceased comprising LR LOC 15/MUGEKA/364 AND LOC 15/GAKUYU 620.

(ii) Only James Irungu Mwangi, Edson P. Githinji Mwangi (1st Administrator/Protector) and Helina Wanjiru Mwangi are entitled to share (equally) the Deceased's net intestate estate.

(iii) The net intestate estate will be shared as follows –

(a) Helina will get outright LR LOC 15/MUGEKA/364. She will also get an additional 1.94 acres from LR LOC 15/GAKUYU 620. As Helina is now deceased her share will go to her children.

(b) The remainder of LOC 15/GAKUYU/620 will be shared equally by James Irungu Mwangi and Edson P. Githinji Mwangi, each getting approximately 2.38 acres. It is so ordered.

19. Parties shall bear their own costs of these proceedings.

DATED AND SIGNED AT MURANG'A THIS 2ND DAY OF MARCH 2017

H P G WAWERU

JUDGE

DELIVERED AT MURANG'A THIS 3RD DAY OF MARCH 2017