



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

MISCELLANEOUS SUCCESSION CAUSE NO. 408 OF 2007

In the Matter of the Estate of STEPHEN M'MIRITI M'MUNGANIA (DECEASED)

LOICE MWARI M'MIRITI.....PETITIONER

VERSUS

MARGARET M'MIRITI.....1ST OBJECTOR

ANNE MWARI M'MIRITI.....2ND OBJECTOR

JUDGMENT

1. The late Stephen M'Miriti M'Mungatia (hereinafter "the Deceased") died on 6th April, 2006 at the Kenyatta Hospital, Nairobi at the age of 71 years.

2. The deceased left the following assets as constituting his estate:-

- (a) Bank Accounts at Standard Chartered Bank Limited and Barclays Bank of Kenya Limited.
- (b) Shares with KTDA.
- (c) LR No. Nkuene/Uruku/228.
- (d) LR No. Abothuguchi/Kithirune/520.
- (e) LR No. Nkuene/Uruku/994.
- (f) LR No. Nkuene/Uruku/967.
- (g) Plot No. 21 Kithirune Market.
- (h) Plot No. 2787/1550, Nanyuki.
- (i) Plot No. 26, Nanyuki.
- (j) Plot No. 27, Nanyuki.

(k) Plot No. 41, Githongo Market.

3. In terms of the consent recorded by the parties on 6th March, 2017, the deceased had three houses (wives) and sixteen (16) children as follows:-

(a) **1st House**

- (i) Margaret N'Miriti (Wife)
- (ii) Kathambi M'Miriti (Daughter)
- (iii) Gladys Nkirote M'Miriti (Daughter)
- (iv) Julius Mutwiri M'Miriti (Son)
- (v) Peter Kithinji M'Miriti (Son)

(vi) Mbaya N'Miriti (Son)

(b) **2nd House**

- (i) Anne Mwari M'Miriti (Wife)
- (ii) Joshua Mwenda M'Miriti (Son)
- (iii) Julius Mwebia M'Miriti (Son)
- (iv) Mary Gakii M'Miriti (Daughter)
- (v) Jane Gaceri M'Miriti (Daughter)
- (vi) Doris Makena M'Miriti (Daughter)
- (vii) Kathure M'Miriti (Daughter) (Deceased)
- (viii) Kinanu M'Miriti (Daughter) (Deceased)

(c) **3rd House**

- (i) Loice Mwari M'Miriti (Wife)
- (ii) Mercy Nkatha M'Miriti (Daughter)
- (iii) Fridah Karambu M'Miriti (Daughter)
- (iv) Joseline Kagwiria N'Miriti (Daughter)
- (v) Caroline Karwirwa M'Miriti (Daughter)
- (vi) Eunice Kathambi M'Miriti (Daughter)
- (vii) Moses Munene M'Miriti (Son)
- (viii) Martin Murithi M'Miriti (Son)

4. On 1st October, 2007, Loise Mwari M'Miriti ("the Petitioner") petitioned for Letters of Administration intestate for the estate of the deceased. Ann Mwari M'Miriti and Margaret M'Miriti, her co-wives objected whereupon all the three widows of the deceased were issued with the Grant of Letters of Administration intestate on 14th August, 2008.

5. On 11th March, 2009, the Petitioner applied for confirmation of grant whereby both Anne Mwari and Margaret M'Miriti protested. While the Protests were pending, Anne Mwari M'Miriti died whereby, her son Julius Mwebi M'Miriti was appointed the 3rd Administrator in her place on 26th November, 2012. Each of the three houses had its own proposed distribution. The first's house distribution was contained in the Affidavit of Protest by Margaret M'Miriti sworn on 17th July, 2009. The proposed distribution by the second house was contained in the Affidavit of Protest sworn by Ann Mwari M'Miriti on 9th March, 2010 while the Supporting Affidavit to the Summons for Confirmation contained the proposed distribution by the 3rd house.

6. All the parties were agreeable as what properties constituted the estate as well as who the beneficiaries were. This is as has been set out in paragraphs 2 and 3 above. In addition to the aforesaid Affidavits, the parties filed Further Affidavits in Support of their contentions as follows:-

- (a) Further Supporting Affidavit by Loise Mwari M'Miriti sworn on 20th March, 2009;
- (b) Further Affidavit in Support of the Petitioner's proposed mode of distribution sworn by Loise Mwari M'Miriti on 3rd March, 2014;
- (c) Further Affidavit in support of Summons for Confirmation sworn by Loise Mwari M'Miriti on 5th April, 2017;
- (d) 2nd Objector's Further Affidavit sworn by Julius Mwebia Mwiti on 7th April, 2017.
- (e) 1st Objector's Further Affidavit sworn by Margaret M'Miriti on 10th April, 2017.

7. In addition to the foregoing, the Advocates for the respective parties filed written submissions on the basis of which they urged the Court to undertake the distribution of the estate of the deceased. I have carefully considered the respective Affidavits of the parties as well as the submissions of Counsel. The only issue for determination is how is the estate of the deceased to be distributed.

8. Before undertaking distribution, I need to make certain observations here. Firstly, neither the parties nor the Counsels disclosed the Account Numbers that the deceased allegedly held at the Standard Chartered and Barclays Bank of Kenya. The number of shares held at KTDA were also not disclosed. Secondly, despite the parties viciously and sharply differing on who should take what from the estate, in particular on the business premises, no valuations for the properties were filed. The Court has only to rely on the vague descriptions contained in the Affidavits to ascertain what befits who. The only Affidavit which slightly became of assistance is the Further Affidavit of Loise Mwari M'Miriti sworn on 3rd March, 2014 which not only disclosed how each family was residing during the lifetime of the deceased but it also disclosed the acreage of the agricultural land as well as produced photographs of the developments undertaken in all the properties save for Plot 21 Kithirune and Plot 41 Githongo. That notwithstanding this Court will proceed and undertake distribution.

9. In undertaking distribution, this Court will in addition to all the foregoing consider the following matters:-

- (a) the parties preferences and proposed distribution;
- (b) that as regards agricultural land, the deceased seems to have settled each family on separate lands where each resided peacefully during his lifetime and even after his demise. Further, where

the children of each house were brought up;

(c) to keep the beneficiaries from each house as separate from the other as possible;

(d) the holding in the case of **Rono v Rono ELD CA No. 66 of 2002 (UR)**;

(e) that the deceased was polygamous and therefore that the provisions of Section 42 of the Law of Succession Act, Cap 160 Laws of Kenya apply in full;

(f) that some properties are more developed than others;

(g) the principle of equity;

(h) that some of the proposed distribution by the Petitioner is incoherent as she has proposed distribution by way of rooms.

10. Taking into considerations all the foregoing, the estate of the deceased will be distributed as follows:-

(a) **Money held in Standard Chartered and Barclays Banks of Kenya Limited**

(i) Margaret M'Miriti }

(ii) Julius Mwebia M'Miriti} Equal shares

(iii) Loise Mwari M'Miriti }

(b) **KTDA Shares**

(i) Margaret M'Miriti }

(ii) Julius Mwebia M'Miriti} Equal Shares

(iii) Loise Mwari M'Miriti }

(c) **LR Nkuene/Uruku/228 (4.3 Acres)**

Shops

i. Canteen – Martin Murithi M'Miriti

ii. Posho Mill – Moses Munene M'Miriti (with Loise Mwari M'Miriti having a life interest on both).

Land

(i) Martin Murithi M'Miriti - 1 Acre

(ii) Moses Munene M'Miriti - 1 Acre

(iii) Balance where dwelling houses are erected – Loise Mwari M'Miriti, Fridah Karambu, Caroline Karwirwa, Mercy Nkatha, Eunice Kathambi and Joseline Kagwiria.

(d) **LR Abothuguchi/Kithirune/520 (3.2 Acres)**

(i) Joshua Mwenda M'Miriti - 1 Acre

(ii) Julius Mwebia M'Miriti - 1 Acre

(iii) Balance - Mary Gakii }

Jane Gacheri } - In equal shares

Doris Makena }

(e) **LR Nkuene/Uruku/994 (2 Acres)**

(i) Julius Mutwiri M'Miriti - 1 Acre

(ii) Patrick Mbaya M'Miriti - 1 Acre

(f) **LR Nkuene/Uruku/967 (1.5 Acres)**

(i) Margaret M'Miriti }

(ii) Peter Kithinji M'Miriti } Equally

(iii) Gladys Nkirote M'Miriti }

(iv) Kathambi M'Miriti }

(g) **Plot No. 21 Kithirune Market**

(i) **Shop A**

Front & Back - Julius Mwebia Miriti

- Gakii M'Miriti

(ii) **Shop B**

(Front & Back) - Joshua Mwenda M'Miriti

- Doris Makena M'Miriti

- Jane Gacheri M'Miriti

(h) **Githongo Market, Plot No. 41**

(i) Front Side - Margaret M'Miriti }

- Peter Kithinji M'Miriti } Equally

- Gladys Nkirote M'Miriti }

(ii) Backside - Julius Mutwiri M'Miriti }

- Patrick Mbaya M'Miriti } Equally

- Kathambi M'Miriti }

(i) **Plot No. 27 Nanyuki**

- (i) Loise Mwari Miriti }
- (ii) Martin Murithi M'Miriti }
- (iii) Moses Munene M'Miriti }
- (iv) Fridah Karambu M'Miriti } Equally
- (v) Caroline Kagwiria M'Miriti }
- (vi) Mercy Nkatha M'Miriti }
- (vii) Joseline Kagwiria M'Miriti }

(j) **Plot No. 2787/1550, Nanyuki Town** Left hand side as one faces away from the building – 25x100 ft

- (i) Margaret M'Miriti }
- (ii) Julius Mutwiri M'Miriti }
- (iii) Peter Kithinji M'Miriti }
- (iv) Gladys Nkirote M'Miriti } Equal Share
- (v) Mbaya M'Miriti }
- (vi) Kathambi M'Miriti }

Right hand side as one faces away from the building – 25x50 ft

- i. Julius Mwebia M'Miriti }
- ii. Jane Gacheri M'Miriti }
- iii. Joshua Mwenda M'Miriti } Equally
- iv. Doris Makena M'Miriti }
- v. Mary Gakii M'Miriti }

(k) **Plot No. 26, Nanyuki**

- (i) Margaret M'Miriti }
- (ii) Julius Mutwiri M'Miriti }
- (iii) Peter Kithinji M'Miriti } Equally
- (iv) Gladys Nkirote M'Miriti }
- (v) Mbaya M'Miriti }

11. This being a family matter, there will be no order as to costs.

It is so decreed.

DATED AND DELIVERED AT MERU THIS 11TH DAY OF MAY, 2017.

A. MABEYA

JUDGE

11/05/2017