



REPUBLIC OF KENYA

IN THE HIGH COURT KENYA

AT MERU

SUCCESSION CAUSE NO. 287 OF 1998

IN THE MATTER OF THE ESTATE OF THE

LATE MWONGO MWANJI - DECEASED

SILAS NYAMU MWONGO.....PETITIONER

VS

M'MBUI M'MWONGO.....1ST PROTESTER

JOYCE MATARIA MUSA.....2ND PROTESTER

JAMES KAMARI MWONGO.....3RD PROTESTER

JUDGEMENT

The deceased Mwongo Mwanji died on 14th December 1965 and was survived by 4 daughters, 4 sons and a widow Dorcas Munyingi M'Mwongo who subsequently died on 29.5.2000 pending determination of the succession cause herein.

The entire estate of Mwongo Mwanji was made up of parcel No. Kiirua/Kiirua/83 measuring 5.02 Hectares. Petition for grant of Letter of Administration to the estate of Mwongo Mwanji was filed on 20th November 1998 by Silas Nyamu Mwongo the 3rd born son of the deceased with the guarantee of personal sureties Wilfred Kobia and Jeremiah Murithi who swore affidavit to that effect on 20th November 1998. Grant was made to Silas Nyamu Mwongo on 27th July 2012 and application for confirmation of grant filed on 23.5.2013 supported by affidavit of Silas Nyamu Mwongo and consents to confirmation and Distribution which was not clearly signed by M'Mbui Mwongo and James Kamari Mwongo. In the affidavit Silas proposed the mode of Distribution of Kiirua/Kiirua/83 as follows:-

1. M'Mbui Mwongo – 3.33 acres
2. Silas Nyamu Mwongo – 3.33 acres
3. James Kamari – 3.33 acres
4. M'Iringo M'Mwongo – Balance

In protest to mode of distribution M'Mbui Mwongo, Joyce Mataria Musa and James Kamari Mwongo filed affidavit in protest against proposed confirmation made by Silas Nyamu for reasons parcel of land in question was occupied by M'Mbui, Kamari and Silas Nyamu exclusively and that they were opposed to M'Iringo Mwongo being granted any share in land No. Kiirua/Kiirua/83 for reasons that the deceased had gathered 2 parcels of land and one of which he registered in the names of M'Iringo M'Mwongo the parcel being number Kiirua/Kiirua/65 measuring approximately 33 acres in 1964. They claimed M'Iringo was registered in trust for himself and all beneficiaries of the estate of M'Mwongo Mwanji.

They said M'Iringo should be content with parcel No. 65 as no one is claiming under trust interest and parcel No. 83 should be distributed to

1. Joyce Mataria – 1 acre
2. M'Mbui Mwongo – 3.84 acres

3. James Kamari – 3.84 acres

4. Silas Nyambu Mwongo – 3.84 acres.

It is averred in the affidavit that the protesters are suspicious the Administrator has orchestrated a plan to take up either as a gift or through transfer M'Iringo's share in land No. 83 after confirmation as he is well aware now M'Iringo acquired parcel No. 65. They urged the court to exclude M'Iringo from benefiting from parcel no. 83 as he already got 33 acres in L.R. No. 65.

The administrator then filed an application dated 26th July 2013 seeking Respondents be restrained from felling trees on parcel 83 pending confirmation on 25th September 2013. On 2nd August 2013 the Administrator withdrew application dated 26th July 2013 and filed Replying Affidavit sworn on 26th September 2013 to the protest and said the protest was not done in good faith as they sat and agreed as family the mode of distribution .

The protest was heard by way of viva voce evidence wherein the protesters testified reiterating their averments in the affidavit and called protester witness number 2 M'Marete M'Arimi who said he was chairman of Land Committee Kiirua Location and they gave M'Mwongo land and that M'Mwongo also asked them to give his son land and they gave M'Iringo son to the deceased land. He didn't know year or size of land he claimed was given to Iringo on account of his father. He said they gave the land to Iringo as Lands Committee.

Joyce Mataria said she is comfortable being given one acre of land out of L.R. No. Kiirua/Kiirua/83. She said she didn't sign any documents consenting to filing of succession cause or even mode of distribution in which she had been left out. From the Green cards in the court Records L.R. No. Kiirua/Kiirua/65 and 83 are registered in the names of Mwongo Mwanji deceased on 8th October 1964 and Iringo Mwongo on 8th October 1964. The Certificate of title are issued on 22.2.1965 for Number 83 and 20th April 1965 for Number 65. There is nothing indicating on the column of remarks to show that M'Iringo M'Mwongo was to hold land No. 65 in trust for his siblings or anyone else.

The 2nd protester witness said that it is the location Land Committee which allocated land to M'Iringo at the request of the deceased. M'Iringo appears as 1st registered owner of L.R. No. Kiirua/Kiirua/65 and unless and until claim is brought that he held land in trust this court cannot and does not have a basis to find that parcel No. Kiirua/Kiirua/65 was a gift inter vivos from the deceased to the said M'Iringo M'Mwongo. Parcel No. 65 cannot therefore be dealt with under Section 42 of Cap 160 Laws of Kenya as part of the estate of the deceased. In the circumstances this court finds that since Joyce Mataria Musa is satisfied to get one acre out of Kiirua/Kiirua/83 the balance will be shared equally among the 4 sons of the deceased herein and unless M'Iringo M'Mwongo surrenders his share to any of his siblings or to anyone else this court will and hereby holds that he is rightful beneficiary to the estate of the late Mwongo Mwanji.

Certificate of confirmation to issue showing that balance of land after Joyce Mataria one acre is removed to be shared equally between M'iringo Mwongo, M'Mbui Mwongo, Silas Nyamu and James Kamari Mwongo. Costs of the protest to be borne by each party on their own.

Ruling Signed, Delivered and Dated this 15th Day of June 2017.

HON. A.ONG'INJO

JUDGE

In the presence of:

C/A- Penina

Applicant: - No Appearance

Respondent:- No appearance

Petitioner: PIP

Order:

Notice of ruling to issue.

HON. A.ONG'INJO

JUDGE