



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MERU
SUCCESSION CAUSE NO 24 OF 2014

**In the Matter of the Estate of Marete Mbui alias M''Marete M'Mbui alias Justus Marete
(Deceased)**

JUSTUS KIMATHI MARETE.....PETITIONER

Versus

RAEL REGERIA M'ARITHO.....OBJECTOR

JUDGMENT

Distribution of estate

[1] This case relates to the estate of Marete Mbui alias M''Marete M'Mbui alias Justus Marete (Deceased). The deceased was survived by two widows namely:-

(a) Hellen Kaimura Marete; and

(b) Rael Regeria M' Aritho

And the following 11 children, namely:-

(a) Justus Kimathi Marete

Naomi Copy the rest of the children from petitioner's submissions

The deceased died intestate and left behind the following assets, namely:-

(a) Shares in Kenya Commercial Bank

(b) Shares in Barclays Bank

(c) Parcel No. THAU/MUMUI/69

(d) Parcel No. NYAKI/KITHOKA/503

(e) Parcel No. NYAKI/MUNITHU/446

[2] The Protestor is the second wife of the deceased. Her protest is premised on three grounds namely;

(1) That she was not involved in the filing of these proceedings;

(2) That L.R NO NYAKI/MUNITHU/69 had already been subdivided by the deceased and shared amongst his sons. According to her, this land should not be part of the estate of the deceased, and distribution that was done by the deceased should not be disrupted; and

(3) That the Petitioner has sold L.R NO NYAKI/MUNITHU/446 and she exhibited a sale agreement to that effect. She urged that this land should revert to the deceased.

The Protestor suggested that only L.R NO NYAKI/MUNITHU/446 and L.R NO NYAKI/MUNITHU/503 should be distributed in these proceedings. Her proposal is that the two be divided in equal shares between the two widows to hold in trust for their respective children. She supported her proposal by stating that each of the widows and their respective children are in occupation of distinct and properly demarcated portions of land and there is a clear boundary separating these portions. The distribution was done by the clan. She cited the case of CHUKA HC SUCC CAUSE NO 343 OF 2015 to support her proposal. She stated further that before this succession, there has been no complaint on this distribution until the Petitioner and his brother cut down trees which form the boundary. She also proposed that the shares at Barclays Bank and Kenya Commercial Bank should be distributed to Hellen Kaimuri and Rael Regeria respectively.

[3] The Petitioner was of a different opinion. According to him the proposal by the Protestor is unfair to the 1st house which has more children, He also complained that the protestor omitted Jemima Karamana Marete in her proposed distribution. He proposed to go by section 40(1) of the Law of Succession Act.

DETERMINATION

[4] I have considered all the rival arguments by the parties as well as the law. One thing is clear; that the parties herein have made proposals in order to get most benefit from the estate. The protestor seems to support the distribution carried out by the clan because her family will reap most benefit out of it. The petitioner is falling back to section 40 of the Law of Succession Act, not for the love of equity or the law but because it would yield most benefit to his family. I say these things because of the following reasons. It is not in dispute that L.R NO NYAKI/MUNITHU/69 was distributed to the four sons of the deceased. But nobody has suggested that such bequest made *inter vivos* should be taken into account under section 42 of Law of Succession Act in determining the ultimate entitlement of such beneficiaries. The protestor does not even wish the bequests to the sons to be considered in these proceedings at all. This kind of approach is not only erroneous but contrary to the law particularly section 42 of the Law of Succession Act which provides that:-

42 Previous benefits to be brought into account

Where—

(a) an intestate has, during his lifetime or by will, paid, given or settled any property to or for the benefit of a child, grandchild or house; or

(b) property has been appointed or awarded to any child or grandchild under the provisions of [section 26](#) or [section 35](#) of this Act, that property shall be taken into account in determining the share of the net intestate estate finally accruing to the child, grandchild or house.

At this point I feel obliged to state- and I have stated in other cases- that section 42 of the Law of Succession Act serves two important purposes; one, it fends off selfish tendencies of human beings in seeking for double portions in the estate of the deceased; and two. It enables the court to attain equity in the sharing out of the estate property among the rightful beneficiaries. Thus, that is the law which I will apply in this case. Another thing; I must state that as a matter of the Constitution and the law, daughters of the deceased are as entitled to inherit their father's estate in equality with the sons. I need not overemphasize this constitutional reality.

[5] I note three important matters;

- (1) That distribution of L.R NO NYAKI/MUNITHU/446 and 503 was not done by the deceased but by the clan after his death;
- (2) There are two houses in this estate; and
- (3) Some beneficiaries were awarded land by the deceased *inter vivos*.

The foregoing three are important considerations in this case; and squarely brings section 40 and 42 of the Law of Succession Act into play. Accordingly, I must take into account the property the deceased awarded to his sons in determining the share of the net intestate estate finally accruing to the sons. I take into account the fact that the four sons have already shared L.R NO NYAKI/MUNITHU/69 which measures 0.41 Ha. Thus, equity demands and I hereby order that:

- (i) Each of the daughters and the widows of the deceased shall receive 1 acre in L.R NO NYAKI/MUNITHU/503 and the balance thereof shall go to the four sons equally.
- (ii) L.R NO NYAKI/MUNITHU/446 is very small and may not be viably or legally subdivided into minute portions. The law on land use and other planning regulations cannot allow such subdivision. Thus, I order that L.R NO NYAKI/MUNITHU/446 shall be sold and the funds to be used to carry out survey work and other services needed in order to implement this grant. Any balance of the proceeds thereof shall be divided equally amongst all the beneficiaries herein.
- (iii) As there is agreement of the parties, the shares in Barclays Bank and Kenya Commercial Bank shall go to the two widows in equal shares.
- (iv) That the grant herein is confirmed on the above terms.
- (v) Each party shall bear own costs. It is so ordered.

Dated, signed and delivered in open court at Meru this 11th day of July 2017

F. GIKONYO

JUDGE

In the presence of:

M/s. Nyaga advocate for Protestor

M/s. Njanga advocate for Petitioner

F. GIKONYO

JUDGE