



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

SUCCESSION CAUSE NO. 92 OF 2007

IN THE MATTER OF THE ESTATE OF M'MUGUNA KIARA (DECEASED)

JULIUS KARANI MUGUNA.....PETITIONER

Versus

FREDRICK MIRITI M'MUGUNA.....1ST INTERESTED PARTY

JAPHETH GIKUNDA M'MUGUNA.....2ND INTERESTED PARTY

KINANU M' ARIMI TABITHA.....3RD INTERESTED PARTY

GEOGINA KAJUJU MUGUNA.....4TH INTERESTED PARTY

ALICE WANJA MUGUNA.....5TH INTERESTED PARTY

JUDGMENT

[1] The administrators of this estate are two: Julius Karani Muguna and Fredrick Miriti M'muguna. They have not distributed the estate to the respective beneficiaries thereof because there is one outstanding issue on the shares of and the person beneficially entitled to the estate. In fact there are two applications for confirmation of the grant which proposes different modes of distribution. One of the applications is by the interested parties; it is the Summons for Confirmation of Grant dated 25th May 2010. In the affidavit in support of the said Summons, the interested parties proposed the estate to be distributed as follows:

- a. **ABOGETA/U-CHURE1602-2.33 ACRES-ALEXANDER NKOROI M'MUGUNA**
- b. **ABOGETA/U-CHURE/1603-3.83 ACRES-2.33 ACRES-JULIUS KARANI MUGUNA to hold in trust for himself and his wife KINANU M'ARIMI TABITHA and the children 1.5 Acres-FREDRICK MIRITI M'MUGUNA to hold in trust for JOYCE KITHIRU GIKUNDA, BEATRICE KARUTA MUGUNA, ALICE WANJA MUGUNA and GEORGINA KAJUJU MUGUNA**

[2] The other Summons for Confirmation of Grant is by the Petitioner and is dated 22nd July 2010. In the affidavit in support, the Petitioner proposed to distribute the Estate of the deceased as follows:

i. ABOGETA/U-CHURE/1603

- a. **JULIUS KARANI MUGUNA-1.83 ACRES**
- b. **THOMAS KIMATHI M'RINKANYA-O.50 ACRES**
- c. **ALICE WANJA,GEORGINA KAJUJU & KITHIRU-1.50 ACRES EQUALLY &**

JOINTLY

(ii) ABOGETA/U-CHURE/1602

a. ALEXANDER NKOROI M'MUGUNA-WHOLE

[3] When the matter came up before Makau J on 24th February 2014, it was agreed that the issue of distribution of the Estate be determined by way of written submissions. I will consider these submissions as well as the material before the court and make a decision.

[4] The Petitioner submitted that he is supposed to get 2.33 acres out of land parcel NO. ABOGETA/U-CHURE 1603 measuring 3.83 acres and that the only objectors objection is that the Petitioner has sold 0.50 acres of his entitlement to a 3rd party- the objector feels that portion of land should not have been sold. He stated that he sold he said portion in order to file these proceedings- which in any event is already sold and he has no money to refund to the third party. Consequently he contended that this portion will be excised from his share and be given the balance, i.e. 1.83 acres. According to the Petitioner, his application catered for everybody and that he has no interest whatsoever with the land going to other beneficiaries.

[5] On the other hand it was submitted for the interested parties that the deceased owned and bequeathed the following properties during his lifetime:

- i. **ABOGETA/U-CHURE/1602 measuring 2.33 acres to Alexander Nkoroi**
- ii. **ABOGETA/U-CHURE/1604 measuring 2.33 acres which he transferred to the names of Fredrick Miguna**
- iii. **ABOGETA/U-CHURE/1603 measuring 3.83 acres which is supposed to be given to the following;-**
 - a. **2.33 acres of 1603 to be taken by Julius Karani Muguna and**
 - b. **The balance of 1.50 acres be shared by the daughters equally save for a ¼ of an acre that should be left as the family cemetery thus the daughters are to share 1.25 acres equally, (that is 1.50-0.25 acres).**

It was further submitted for the interested parties that this position has been illustrated by the Petitioner in his affidavit dated 9th December 2008 under paragraph 3 except he concealed particulars of the other daughters of the deceased and the fact of a family cemetery. The interested parties' further contended that the 3rd interested party was the Petitioner's wife and that all she wants is that their share be registered under their names as the Petitioner has been looking for buyers and that she feared that her children would be left landless as this land is their source of livelihood. Consequently the interested parties urged the court to rule as expressed in their proposed mode of distribution as that was what the deceased wished and wanted to be done.

DETERMINATION

[6] I have carefully considered the separate proposals by the Petitioner and the Interested Parties as well as their submissions on distribution of the estate. The record shows that all the beneficiaries except the Petitioner gave their consent to confirmation of the grant based on the interested parties' proposed mode of distribution. See consent to the confirmation of grant which was annexed to the application as "FM1". I note that the Petitioner and the interested parties agree that land parcel No. ABOGETA/U-CHURE/1602 measuring 2.33 acres should be given to Alexander Nkoroi. The only dispute is on how **ABOGETA/U-CHURE/1603** is to be distributed. The interested parties submitted that their proposed on distribution is as per the wishes of the deceased- which fact they said was acknowledged by the Petitioner's own affidavit dated 9th December 2008 at paragraph 3 where the Petitioner deposed:

3. That our deceased father subdivided it into three portions as follows:

- i. ***ABOGETA/U-CHURE 1602 MEASURING 2.33Acres was registered into Alexander Nkoroi's name.***
- ii. ***ABOGETA/U-CHURE 1604 measuring 2.33 Acres as registered into Fredrick Miriti Muguna's name.***
- iii. ***ABOGETA/U-CHURE 1603 measuring 4.33 Acres was reserved for me to get 2.33 Acres and my two sisters each to get 0.75 Acres.....”***

[7] The interested parties have claimed that the 3rd interested party who is the Petitioner's wife is fearful that the Petitioner may sell their land; the exact allegation is that he has been looking for buyers, and so, her proposal was that their share to be registered under their names in order to obviate a situation where her children will be left landless. The Petitioner did not deny these allegations. Indeed, the Petitioner has already sold ½ acre to a 3rd party- this is problematic. Again, the Grant issued to the Petitioner on 26th June 2007 was revoked by Kasango J on grounds, inter alia that the Petitioner had failed to include some properties in the cause, and failed to obtain the consent of all the beneficiaries when applying. All these are important factors to consider in this application. There is nothing which suggests that the interested parties are mistaken in their recollections of the wishes of the deceased. There is also nothing to suggest that they are not telling the truth. And taking into account the totality of the circumstances of this case and the Petitioner's conduct, the proposed mode of distribution by the interested parties is replete with clear details; it is reasonable, just and fair. In the circumstances, I adopt the proposals by the interested parties to be the basis of distribution of this estate. Accordingly, I confirm the grant herein. Distribution of the estate shall be in accordance with the proposals by the interested parties, that is to say:-

- (a) ABOGETA/U-CHURE/1602 measuring 2.33 acres to Alexander Nkoroi**
- (b) ABOGETA/U-CHURE/1604 measuring 2.33 acres goes to Fredrick Miguna**
- (c) ABOGETA/U-CHURE/1603 measuring 3.83 acres will be distributed as follows;-**
 - (a) 2.33 acres to Julius Karani Muguna and**
 - (d) The 1.25 acres be shared by the daughters equally**
 - (e) 0.25 (¼) of an acre shall be left as the family cemetery to be held in trust for the family by the Petitioners.**

[8] This being a succession matter I will make no order as to costs.

Dated, signed and delivered in open court at Meru this 1st day of February 2016.

F. GIKONYO

JUDGE

In the presence of:

M/s. Nelima advocate for M/s. Mwangi advocate for 1st Administrator

Mr. Mutegi advocate for 2nd Administrator and interested parties.

F. GIKONYO

JUDGE