



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MERU
SUCCESSION CAUSE NO. 111 OF 2013

IN THE MATTER OF:

The Estate of M' Ikiara M' Kiunga alias Ikiara Ikiunga (Deceased)

JULIUS KINYURU KIARA.....PETITIONER

Versus

BEATRICE MUGITO.....APPLICANT

RULING

[1] Before me is a Chamber Summons Application brought pursuant to Rule 73 of the Probate and Administration Rules in which the Applicant seeks the following orders:

1. ***That this honorable court be pleased to order that the share of ½ of an acre from Land Parcel No. Nkuene/Kithunguri/190 that was shared out to Silas Mwiti is held by him jointly with Veronica Ntinyari, Beatrice Mugito, Susan Cheri and Simon Mutwiri and the confirmed letters of administration be amended accordingly.***
2. ***That costs of this application be provided for.***

[2] The said application is premised on the following grounds:

1. ***That the late Virginia Kanyore was the daughter of the deceased herein and had been given by her late father ½ of an acre from Land Parcel No. Nuene/Kithunguri/190 which the applicant and other children of Virginia agreed that it shall be given to Silas Mwiti to hold on their behalf.***
2. ***That the applicant together with Silas Mwiti, Veronica Ntinyari, Susan Cheri and Mutwiri Kanyore were children of the late Virginia Kanyore and therefore dependants in the estate.***
3. ***That the applicant all along knew that the succession cause had been filed and was in belief that Silas Mwiti would protect the interest of his sisters and brothers as agreed but the said silas Mwiti has refused the applicant and other children of Virginia access to ½ an acre of Land Parcel No. Nkuene/Kithunguri/190 and he threatened them with a panga and has refused them to build as a result of which a complaint was lodge with the police.***
4. ***That the administrator and other beneficiaries to the estate all along knew that Silas Mwiti would hold the share due to the late Virginia on the applicant's behalf but Silas Mwiti has recently claimed that the ½ of an acre from the said land was absolutely his.***
5. ***That it would meet the ends of justice if the names of the applicant Susan Cheri, veronica Ntinyari and Mutwiri Kanyore are indicated in the confirmed grant as persons entitled to ½ of an acre of Land Parcel No. Nkuene/Kithunguri/190 being the share that was shared out to Silas Mwiti.***

[3] The application was opposed by the Interested Party through a replying affidavit filed in court on 20th May 2016. The interested party averred *inter alia* that the Applicant was her sister from the same mother but different father; that her mother gave birth to him while at his father's home, i.e. grandfather's (deceased) home; but she left him under the care of his grandparents when she married the father of his other siblings who are applying now. Therefore, as he was brought up by his grandparents, under Kimeru customary law he was considered to be a son of the deceased herein (his grandfather). It was his further contention that during his lifetime, his grandfather had bequeathed to him 2 acres of his land and his uncle (the petitioner herein) shortchanged him and gave him half an acre instead and that he was now surprised that his siblings were now claiming part of his land which is ½ acre of agricultural land whilst they knew that the land could not be subdivided due to land control.

DETERMINATION

Some preliminaries

[4] When the matter came up for hearing on 27th April 2016, all the parties were present and Mrs. Ntaragwi for the Petitioner intimated to court that they were not opposing the application. On 28th April 2016, the court allowed Mr. Mutegi for the Interested Party to file a response to the application and slated the matter for hearing on 23rd May 2016. On 23rd May 2016, the Applicant was absent and Mr. Mutegi for the Interested Party intimated that he had filed his response to the application.

Children of deceased

[5] From the record, and this is not denied by any party, the late Virginia Kanyore alias Virginia Kaugure is the daughter of the deceased. She is also the mother of the interested party as well as the other siblings namely Beatrice Mugito, Susan Cheri, veronica Ntinyari and Mutwiri Kanyore. Their claim, therefore, is that as children of the late daughter of the deceased they are entitled to a share of their mother's inheritance from his father. They were also dependants in the estate. Their mother's share was identified to be ½ acre of land in the estate property which the interested party is holding on his own behalf and that of the other siblings mentioned above.

[6] One thing which is glaring from the pleadings filed is that the petition omitted the late Virginia Kanyore from the list of children of the deceased. The letter from the chief also omitted her. She was no mentioned anywhere in these crucial documents. But as I stated earlier, there is no doubt she was a daughter of the deceased. The reasons for not listing her as one of the children of the deceased can only be explained by the petitioner. None has been provided to this court and so I will take it to mean a violation of the law. That notwithstanding, what does the law say about a deceased child of the deceased? A child of the deceased is ordinarily entitled to inherit from the deceased parent unless for lawful reasons such child is precluded from inheritance. And in case the child dies, the share of the deceased child in the estate of the intestate parent will devolve upon the issues of the deceased child in equal shares. I note that the Applicant in her application contended *inter alia* that the late Virginia Kanyore had been given by her late father ½ of an acre from Land Reference No. Nkuene /Kithunguri/190. That averment is not supported by evidence. I also note that the Interested Party contended that he was brought up by his grandparents and that under Kimeru customary law he is considered to be a son of the deceased. He also averred that during his lifetime, his grandfather bequeathed to him two acres of his land but his uncle (the petitioner), shortchanged him and gave him half an acre of land and that his siblings had another parcel of land at their father's land and that they were just motivated by greed. One Joseph Mbae swore an affidavit to support the Interested Party's claim and further deposed that the claim by the Applicants was unfair to the Interested Party as he was given the suit land by his grandfather. Similarly, all these allegations are not supported by verifiable evidence and were not adduced before court as the basis for the share identified and assigned to the interested party. If the interested party was serious, especially on the serious accusations he has made against the Petitioner, he should have known better that those arguments by the interested party would be

useful in a claim by him against the petitioner; but surprisingly he has brought none. Those allegations are mere conjectures. Thus, in a more substantive approach, despite all the claims by the interested party, the fact that the late Virginia Kanyore was the daughter of the deceased and that she was entitled to inheritance has not been dislodged. There is also another vital connexion; that the interested party, the applicant and the other siblings are children of the late Virginia. Accordingly, a trust is easily inferred from the circumstances of this case. I, therefore, find and hold that the interested party holds the ½ acre assigned to his name in the confirmed grant on his own behalf and that of the other siblings namely Beatrice Mugito, Susan Cheri, veronica Ntinyari and Mutwiri Kanyore. A trust has been established. Accordingly, the confirmed grant shall be amended. The upshot therefore is that I allow the application dated 24th March 2016. This being a succession matter involving close family members, I will make no order as to costs. It is so ordered.

Dated, signed and delivered in open court at Meru this 12th day of July

2016

F. GIKONYO

JUDGE

In the presence of:

Mrs. Ntarangwi advocate for petitioner.

Applicant in person.

F. GIKONYO

JUDGE