



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KAKAMEGA

SUCCESSION CAUSE NO.847 OF 2013

IN THE MATTER OF THE ESTATE OF REUBEN MUGESANI BULIMU (DECEASED)

MUGESANI BULIMU(DECEASED)

AND

JANE M'MBONE MUGESANIPETITIONER

RULING

Introduction

1.The deceased herein REUBEN MUGESANI BULIMU (Deceased) died intestate on the 19th November 2000. Grant of letters of administration intestate were granted to JANE M'MBONE MUGESANI who is the deceased's spouse. She applied for confirmation of the said grant vide the application dated 4th November 2015 and has given a proposal on distribution of the deceased's estate in the affidavit in support of the Summons for Confirmation.

Affidavits of Protest

2. Two of the Petitioner's children namely RONALD ODALI MUGESANI and RUTH IMINZA MUGESANI have filed affidavits of protest against the petitioners proposed distribution. Ronald Odali Mugesani has filed two affidavits of protest dated 8th February 2016 and 19th April 2016 respectively and a supplementary affidavit dated 24th May 2016. He is the eldest son of the deceased herein and claims that the petition herein was filed without his consent and that he was not consulted on the proposed mode of distribution.

3. He claims further that other beneficiaries have not been provided for in the proposed mode of distribution. In his affidavit dated 19th April 2016 he proposes distribution as follows:-

1. Jane Mmbone Mugesani 0.35 acres
2. Rose Jahenda Mugesani 0.17acres
3. Margaret K. Lungaho 0.17acres
4. Elizabeth Kijusa 0.17acres
5. Flora Ijunga(deceased) 0.17acres
6. Mary Mudere Anekeya 0.17acres
7. Ruth Iminza 0.17acres
8. Josephine Vuguza 0.17acres
9. Dinah Sahenda Ubunga 0.17acres
- 10.Catherine Muhonja 0.17acres

11. Ronald Odali Mugesani 0.17 acres
12. Fanuel Kihu Mugesani 0.8 acres
13. Thomas Lukase Mugesani 0.8 acres
14. Benard B. Mugesani (deceased) 0.3 acres

4. He states in the supplementary affidavit dated 24th May 2016 that there is a major road bisecting the deceased's property being S/Maragoli/Buyonga/936. That this bisection should be discussed.

5. Ruth Iminza Mugesani on her part states that she has been living on parcel No. South Maragoli/Buyonga/936 for the last 20 years. She proposes equal distribution of the deceased's estate amongst all the beneficiaries.

6. In her affidavit dated 29/01/2016, the Petitioner proposes distribution of the deceased's estate as follows:-

- Jane Mmbone Mugesani - 0.34ha
- Fanuel Kihu Mugesani - 0.37ha
- Ronald Odali Mugesani - 0.42ha
- Brenda Mmbone Bulimu - 0.15ha
- Mugesani Thomas Lukase - 0.40ha
- Ruth Iminza - 0.04ha

Determination

7. The only issue this Court is to determine is the distribution of the deceased's estate. This Court has taken note of all the concerns raised by the protestors in their respective affidavits and will address the same herein.

8. According to the letter dated 13th November 2013 from the Assistant Chief Ikumba sub location the deceased died intestate and left the following surviving him:

1. Jane Mmbone Mugesani - widow
2. Rose Jahenda Mugesani - daughter
3. Ronald Odali Mugesani - son
4. Fanuel Kihu Mugesani - son
5. Elizabeth Kijusa - daughter
6. Margaret K. Lunga'ho - daughter
7. Thomas Lukasa Mugesani - son
8. Mary Mudere Mugesani - daughter
9. Ruth Iminza - daughter
10. Benard Bulimu Mugesani - son
11. Josephine Vuguza - daughter
12. Dinah Jahenda Ubunga - daughter
13. Catherine Muhonja - daughter

9. Ronald Odali Mugesani in his affidavit has mentioned one Flora Ijunga (deceased) as one of the daughters to the deceased herein.

10. There are two other affidavits worth of mention: the affidavit dated 27th January 2016 and the one dated 2nd March 2016. In the affidavit dated 2nd March 2016 sworn jointly by Edwin Ngoda Adamba and Austine M. Adamba the only children surviving the late Florence Ijunga Adamba they have deponed therein that they do not want to be allocated any portion whatsoever from the land parcel L.R. S/Maragoli/Buyonga/936 because their other left enough inheritance which they still possess and own to date.

11. The daughters of the deceased except Ruth Iminza also swore a joint affidavit on the 27th January 2016 in support of the petitioner's proposal on mode of distribution of the deceased's estate. They have indicated that they do not wish to be apportioned any part of L.R. S/Maragoli/Buyonga/936 as their interest will be taken care of by the Petitioner.

12. In determining the distribution of the deceased's estate this Court is guided by the provisions of the Law of Succession Act Cap 160 Laws of Kenya and especially Part V thereof. Section 35 (1) of the said Act is the appropriate provision to apply in this case since the deceased left one surviving spouse the petitioner herein. Since the deceased left land parcel No.S/Maragoli/Buyonga/936, the petitioner has a life interest in the whole residue of the net estate. She is therefore entitled to hold the land in trust for all the beneficiaries.

13. However, in view of the fact that most of the beneficiaries need to settle down on their own portions the said parcel of land will be divided equally among the beneficiaries who have an interest in the same, and shall exclude those who have renounced their interest. These beneficiaries entitled to get a share of the deceased's estate are:

1. Jane M'mbone Mugesani
2. Ronald Odali Mugesani
3. Fanuel Kihu Mugesani
4. Thomas Lukase Mugesani
5. Ruth Iminza
6. Brenda Mmbone Bulimu

14. To expedite the completion of these proceedings the Petitioner is directed to file a fresh Summons for Confirmation of grant within thirty (30) days from today . In case of default Ronald Odali Mugesani and Ruth Iminza Mugesani shall do so in terms of the mode set out by the Court hereinabove.

15. Concerning costs, I note that all the parties herein are mother and children. In the circumstances, each party shall bear their own costs.

16. Orders accordingly.

Ruling delivered, dated and signed in open Court at Kakamega this 19th day of July 2016.

RUTH N. SITATI

J U D G E

In the presence of:

Present in Person For Petitioner

Present in Person For Ronald Odali Mugesani

Present in Person For Ruth Iminza Mugesani

Solomin Lagat - Court Assistant