



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT CHUKA**  
**SUCCESSION CAUSE NO. 536 OF 2015**  
**(FORMERLY CHUKA SPM SUCCESSION CAUSE NO. 57 OF 2014)**  
**IN THE MATTER OF THE ESTATE OF THE LATE MURIUNGI CIRIGA**  
**(DECEASED)**  
**AND**  
**FRANKLINE NGURWE MURUNGI.....PETITIONER**  
**- VERSUS -**  
**NJAGI MURUNGI.....PROTESTOR**

**J U D G M E N T**

1. M'Murungi M'Waciriga "*the deceased*" died on 11th August, 1993. He left LR No. Magumoni/Thuita/205 measuring 0.97 Ha as the only asset to his estate. On 3rd March, 2014, Frankline Ngurue Murungi ("*the Petitioner*") petitioned for Letters of Administration Intestate. The grant was issued to him on 13th January, 2015.

2. On 3rd February, 2016, the Petitioner applied for confirmation of the grant proposing to distribute the estate property LR Magumoni/Thuita/205 ("*plot No. 205*") as follows:-

- a) Frankline Ngurue Murungi - 1.197 acres
- b) Wacuka Albert - 1.197 acres

3. On 22<sup>nd</sup> February, 2016, Njagi Murungi ("*the Protestor*") filed this protest. He contended that he is a son of the deceased; that the proposed distribution excluded other beneficiaries of the deceased being Medrine Ciakirugu Murungi, Elimna Kangai Murungi, Njagi Murungi, and Susan Ciamwari Murungi. He proposed that he be appointed as the sole administrator of the estate. He proposed that the estate be distributed as follows:-

- a) Njagi Murungi - 0.50 acres
- b) Frankline Ngurue Murungi - 0.50 acres
- c) Anceter Wachuka Albert - 0.50 acres

- d) Susan Ciamwari Murungi - 0.25 acres
- e) Susan Kangai Murungi - 0.25 acres

Anceter Wachuka Albert swore an affidavit on 3rd June, 2016 in which she supported the averments of the Protestor.

4. Opposing the protest, the Petitioner filed an Affidavit evidence on 13th August, 2016. He now contended that the deceased was survived by seven beneficiaries whose names he gave as Janet Kanini (deceased), Njagi Murungi, Albert Nduru (deceased but represented by his widow Anceter Wachuka Nduru), Susan Ciamwari, Medline Ciakirugu, Frankline Ngurue Murungi and Elimner Kangai. He swore that the protestor was not entitled to participate in distribution as the deceased had gifted him during his lifetime property measuring 3.75 acres being Magumoni/Thuita/481. That it is him, the widow of the deceased Medrin and Anceter Nduru who had been living in plot No. 205 peacefully as the Protestor was throughout living on the property that he had been gifted and the daughters were happily married. He now proposed that the estate be distributed as follows:-

- a) Anceter Wachuka - 0.75 acres
- b) Susan Ciamwari - 0.20 acres
- c) Medrin Ciakirugu - 0.35 acres
- d) Elimner Kangai - 0.20 acres
- e) Frankline Ngurue Murungi - 0.50 acres

5. The learned Counsels for the parties Mr. Mutani for the Protestor and Mr. Mugo for the Petitioner agreed that they should only submit on the evidence on record. Mr. Mutani submitted that the Petitioner's intention was to disinherit the rest of the beneficiaries in his proposal in his favour and one other beneficiary only. On his part, Mr. Mugo submitted that the Protestor having been gifted LR No. Magumoni/Thuita/481, he was not entitled to share in the estate of the deceased. He urged the court to adopt the Petitioner's revised mode of distribution.

6. Having considered the Affidavit evidence on record and the submissions of Counsel. The two issues for determination are: is the Protestor entitled to participate in distribution? How should the estate be distributed?

7. From the record, it is not in dispute that the beneficiaries of the estate of the deceased are as follows:-

- a) Medline Ciukirugu - widow
- b) Frankline Ngurue Murungi - son
- c) Njagi Murungi - son
- d) Anceter Wachuka Albert Nduru - daughter in-law
- e) Susan Ciamwari - daughter
- f) Elimner Kangai - daughter

In the Affidavit evidence of the Petitioner sworn on 13th August, 2016, the Petitioner deposed:-

***"6. That during the lifetime of the deceased he gifted NJAGI MURUNGI one of his sons LR Magumoni/Thuita/481 which land measures 1.6 Ha or thereabout (annexed and marked F.N. M***

**1 is the green card of LR ; MAGUMONI/THUITA/481).**

**7. That the court should consider the gift to the objector courtesy of section 31 of the Law of Succession act (sic) when distributing the estate of the deceased to the rightful beneficiaries."**

8. These averments were neither denied nor challenged. They remained uncontroverted and the court is left to conclude that the Protestor had been provided for during the lifetime of the deceased. The correct provision applicable in the circumstances is not section 31 but section 42 of the Law of Succession Act ("the Act") I say so because there was no evidence that was produced to show that the said gift was given to the Protestor in contemplation of death as is required by section 31 of the Act. The green card produced shows that the gift must have been given in or about 1967 yet the deceased died in 1993. Obviously, he could not have been in a state of contemplation of death for twenty six (26) years. This court's view therefore is that the relevant provision applicable is section 42 of the Act which provides:-

**"42. Where-**

**a) an intestate has, during the 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 shares of the net intestate estate finally accruing to the child, grandchild or house."**

9. I have noted that LR No. Magumoni/Thuita/481 covers an area of 1.62 Ha (approximately 4.0 acres) while plot No. 205 which constitutes the estate covers an area of 0.97 Ha (approximately 2.396 acres). Under section 38 of the Act, where there is no spouse the estate is to be distributed equally among all the children of the deceased. However, in this case there is a spouse who was left behind. If the court was to apply the principle of equity inherent in section 38 of the Act, each beneficiary will be entitled to approximately 0.4 acres which is far too less than the massive 4 acres which the Protestor is already enjoying courtesy of the bequest by the deceased during his lifetime. In this regard, by dint of section 42 of the Act, the court will take into account the aforesaid bequest when distributing estate.

10. This court is aware that under section 35 of the Act, where there is a spouse left by a deceased, she/he is entitled to a life interest over the net estate and on her/his demise the same is to be distributed equally to the children. (see the Court of Appeal decision in **Stephen Gitonga M'Murithi .v. Faith Ngira Murithi Nyeri** CA No. 3 of 2015). In this case however, while the Protestor insists that the widow should get nothing, the Petitioner insists in providing for her. Surely, it cannot have been the intention of the deceased that after his demise, his widow be destituted in favour of the children. No court can sanction any such arrangement.

11. Apart from the Protestor and the Petitioner, it would seem the rest of the beneficiaries were contented with the proposed distribution. In this regard, they will be comfortable with the proposed shares. In this regard, since the Protestor had already received 4.0 acres from the deceased, he is not entitled to participate in the distribution of the estate presently as he holds far much in excess of what constitutes the estate. I will grant a life interest to Medrine Ciakirugu on the whole of LR Magumoni/Thuita/205 and in trust for the following upon her demise:-

- |                                 |   |           |
|---------------------------------|---|-----------|
| a) Elimner Kangai               | - | 0.20 acre |
| b) Susan Ciamwari               | - | 0.20 acre |
| c) Frankline Ngurue Murungi     | - | 0.90 acre |
| d) Anceter Wachuka Albert Nduru | - | 1.0 acre  |

This being a family dispute I will order no costs.

It is so decreed.

**DATED and delivered at Chuka this 3rd day of November, 2016.**

**A.MABEYA**

**JUDGE**

Judgment read and delivered in open court in presence of all the parties.

**A.MABEYA**

**JUDGE**

**3/11/2016**