



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT MERU**  
**SUCCESSION CAUSE NO. 365 OF 2005**

**IN THE MATTER OF THE ESTATE OF KIUGU KITHIKI (DECEASED)**

**EMMA KIUGU .....PETITIONER**

**VERSUS**

**JOSEPH MURIUKI KIUGU ..... OBJECTOR**

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

1. The Petitioner EMMA KIUGU, wife to the deceased hereIn petitioned for grant of Letters of Administration Intestate on 29<sup>th</sup> September 2005. The Court granted her Letters of Administration Intestate on 13<sup>th</sup> January 2006; that subsequently through an application dated 10<sup>th</sup> September 2006 she sought the grant to be confirmed in terms of paragraph 5 of her supporting affidavit.
2. That before the grant could be confirmed Joseph Muriuki Kiugu filed his mode of distribution claiming he is a step-son to the Petitioner herein; that on 17<sup>th</sup> June 2014 the Court directed the issue of distribution be determined by way of *viva voce* evidence.
3. The Objector Joseph Muriuki Kiugu gave evidence and called two witnesses whereas the Petitioner gave evidence and called one witness.
4. The Objector's case briefly is that the deceased was his father and he had two wives. The Objector is from the deceased's first wife, Nazerine Koome Kiugu (deceased) who had six children (one of whom is deceased) namely;

1. Joseph Muriuki Kiugu
2. Mercy Ithiru Kiugu
3. Pamela Ciomba Kiugu
4. Violet Kathure Ngacha
5. Mary Karwiro Kiugu
6. Kinanu Kiugu (deceased)

That the 2<sup>nd</sup> wife Emma Njiru has 7 children namely;

1. Kajuju Kiugu
2. Kaimuri Kiugu
3. Kawira Kiugu
4. Kaari Kiugu
5. Antony Murithi Kiugu
6. Kagwiria Kiugu
7. Gakii Kiugu

5. The deceased left parcel **L.R.NO. IGOJI/GIKUI/2488** measuring 2.16 hectares, about 6.30 acres less 0.89 acres given to the Objector by the deceased in 1997 in presence of elders. The Objector testified he is settled in the said portion which he got in 2004. The balance of the land is around 4.652 acres.
6. That there is no dispute as to the deceased beneficiaries. All parties admit all beneficiaries are entitled to share the deceased estate, however the Objector is seeking to get ½ of the deceased's estate plus 0.89 acres claiming that when his father died, they agreed with his mother that he should get such parcel of land. He claimed the elders decided the Petitioner should get one acre so that in case anything happens to the deceased daughters they can have somewhere to settle; so that in 1<sup>st</sup> house daughters can have ½ an acre and the 2<sup>nd</sup> house ½ an acre. He claimed that the Petitioner changed her mind when half of the land was to go to him. He prayed distribution be as per his scheme.
7. OW2, Betha Kaaria Henry, cousin to the Objector testified that according to Meru Custom, in a polygamous family with two houses, the deceased estate ought to be shared equally. OW3 brother to the Objector testified that the deceased had given the Objector 0.89 acres. That it was decided the deceased land to be shared amongst his two houses equally in 2003 amongst his sons. That Chief said the Petitioner should be given one (1) acre for all daughters and that the Petitioner sold one (1) acre.
8. The Petitioner agreed with the Objector on the deceased beneficiaries and on the deceased assets. She admitted that the Objector was gifted with 0.89 acres which was subsequently transferred into his name. She proposed the land be shared according to her proposal. She added that one Wilfred W. Miriti is a purchaser. She proposed Mr. Murithi to get 1.84 acres, Muriuki 2.5 acres and herself 0.7 acres. She objected to the land being shared into two equal portions. PW2 confirmed the deceased had two wives but did not know the children of the deceased. He averred the Elders decided the Objector should get 2½ acres, Kimotho 2½ acres and Petitioner one (1) acre to accommodate the daughters. He confirmed the Petitioner sold one (1) acre.

That after hearing this matter parties sought time to bring consent on distribution. However parties came later and sought Judgment as they were unable to agree.

**Section 40 of the Law of Succession Act (Cap.160) Laws of Kenya** provides how an estate of a deceased who is polygamous should be shared. **Section 40 of the Law of Succession Act** provides;

***“40 (1) where an intestate has married more than once under any system of law permitting polygamy, his personal and household effect and the residue of the net intestate estate shall, in the first instance, be divided among the houses according to the number of children in each house, but also adding any wife surviving him as an additional unit to the number of children”.***

In this case there is no dispute that the deceased had two houses. The first wife now deceased is survived by five (5) children whereas the 2<sup>nd</sup> house has seven (7) children plus the Petitioner making a total of eight (8) of them. The total number of the beneficiaries is therefore 13.

9. The deceased asset comprised of one parcel of land L.R. **Igoji/Gikui/2488** measuring 2.16 hectares equivalent to 5.35 acres. The objector had been given by the deceased 0.89 acres and the same was transferred to him; which portion I have taken into account in sharing the deceased estate.
10. The total size of the deceased land before 0.89 acres were given to the Objector is approximately 6.246 acres. The 1<sup>st</sup> house is supposed to get  $\frac{5}{13} \times 6.246 = 2.4023$  less 0.89 = 1.5123 acres. The 2<sup>nd</sup> house is supposed to get  $\frac{8}{13} \times 6.246 = 3.8436$  acres.
11. The upshot is that I reject both schemes of distribution by the parties as they are not by consent and none of it is in conformity with **Section 40 of the Law of Succession Act**. The Objector has excluded the deceased daughters and included a purchaser in the Petitioner's shares whereas the Petitioner has excluded the daughters and included a purchaser on her part. The deceased daughters whether married or not should have been considered and included. The **Law of Succession Act under section 29(a)** recognizes daughters as beneficiaries. The Objector and the

Petitioner attempt to exclude the deceased's daughters on basis of marital status and/or sex is discriminatory and offends **Article 27 of the Constitution of Kenya 2010**. I therefore find and hold the Objector's and Petitioner's attempt to exclude the deceased daughters is discriminatory and unconstitutional and hold that the deceased daughters are entitled to inheritance of their father's estate like any other child of the deceased.

12. In view of the size of the portions of the land due to each individual from the said respective houses, I am satisfied that each house should have their respective portion registered separately and those to be registered to hold in trust for the others pending subsequent equal distribution and registration if need be. On the issue of the purchaser, I would leave the matter between herself and the house number two as she purchased the land from a beneficiary and is not a creditor to the deceased estate. I have therefore decided not to award her the portion claimed to have been sold to her. Let the Petitioner and herself sort out the issue between themselves. She is not a beneficiary or creditor to the deceased estate to be awarded a share at this stage.

13. The upshot is that the deceased estate is distributed as follows;

- a. **Joseph Muriuki Riungu to be registered as joint owner and trustee of 1.5123 acres for Mercy Ithiru Pamela Ciomba Kiugu, Violet Kathure Ngacha and Mary Gorreti Karwiro.**
- b. **Emma Kiugu to be registered as joint owner and trustee of 3.8436 acres for Rosemary Kajuju Kiugu, Lucy Kaimuri Kiugu, Eunice Kawira Kiugu, Triza Kaari Kiugu, Anthony Muriithi Kiugu, Catherine Kagwiria Kiugu and Stella Gakii Kiugu.**
- c. **The parties are step-son and step-mother and I direct each party bears its own costs.**

**DATED AND DELIVERED AT MERU THIS 4<sup>TH</sup> DAY OF JUNE,**

**2015**

**J.A. MAKAU**

**JUDGE**

**DELIVERED IN OPEN COURT IN THE PRESENCE OF:**

1. Objector in person - present
2. Petitioner in person - absent
3. C/clerk – Peninah/Mwenda

**J.A. MAKAU**

**JUDGE**