



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT KERUGOYA**  
**SUCCESSION CAUSE NO. 128 OF 2013**  
**IN THE MATTER OF THE ESTATE OF JORAM MUNA GICHUNGE (DECEASED)**  
**JOYCE WANJIKU MUNA.....PETITIONER/APPLICANT**  
**AND**  
**ALEXANDER MUGWERU GICHUNGE.....PROTESTOR**

**JUDGMENT**

1. **ALEXANDER MUKWERU GICHUNGE** the protestor herein filed a protest to the application by the Petitioner herein for Confirmation of Grant issued to her on 5<sup>th</sup> November, 2011. The main basis for objection to the mode of distribution proposed by the administrator is that the estate should be divided into two equal parts, one part going to administratrix and her children while the remaining part going to him by virtue of being a brother to the deceased the late **JORAM MUNA GICHUNGE** to which this succession cause relates to.

2. The protest filed was canvassed through *viva voce* evidence and all the parties in this cause tendered oral evidence in support of their respective position. The protestor testified that he was living on the land forming part of estate even during the lifetime of his deceased brother. He testified that he had some disagreement with his late brother over the parcel he was occupying. According to him the late brother should have given him half the land since the land belonged to their father. He further told this Court that his late brother did not agree with him and instead chased him out of the land. According to the protestor, his late brother was registered as a trustee of the land parcel No. **MWERUA/KAGIOINI/98**, the only property forming the estate in this cause.

3. The Petitioner on her part testified that she was the sole widow to the deceased and that is the capacity in which she petitioned for letters of administration in this cause. She told this Court that the deceased died leaving behind the following children:

- i. Edward Mwangi
- ii. Gichira Muna
- iii. Lilian Nyawira
- iv. John Kimani
- v. Mugweru Muna

- vi. Gacheru Muna
- vii. Wamboi Muna
- viii. Wakiine Muna
- ix. Maina Muna (deceased)
- x. Irungu Muna (deceased)

4. The Petitioner testified that her late husband had indicated that all his children should be given a share in the estate and that the protestor be given a share as well and had in fact carried out sub-division and showed each beneficiary their respective portions.

She further stated that a surveyor was brought by her late husband and that the protestor should have raised issues with her late husband if he was dissatisfied with the portion given to him. According to the Petitioner the proposed mode of distribution is in accordance with the way her husband had sub-divided the land and reflects his wishes. She conceded that after the demise of her husband, the protestor took her to the area District Commissioner to deliberate over the land dispute but said that the District Commissioner ruled in her favour since the land belonged exclusively to her late husband.

5. The Petitioner was supported by one of the beneficiaries **EDWARD MWANGI JORAM**, a son to the deceased who told the Court that they had agreed as a family to have the estate distributed in accordance with the proposed mode suggested by the administratrix herein. He told the Court that all beneficiaries had got an equal share save for the Petitioner who got a larger share as per their agreement. He told the Court that the land forming the estate had been divided into ten (10) portions. He told this Court that his late father was kind enough to accommodate his brother herein who according to him had otherwise no right to claim any part of the estate arguing that the protestor never even stayed on the portion given to him but they respected their late father's wishes to let him (protestor) take the portion given to him.

6. This Court has considered all the oral evidence tendered by parties who testified in this cause. The issue for determination is whether the protestor qualifies in law to be considered as a beneficiary to the estate of the late **Joram Muna Gichunge** (deceased) as a 'dependant' within the meaning given under **Section 29** of the **Law of Succession Act (Cap. 160)**. Under that section the Petitioner herein and her children automatically qualify to be referred to as dependants therefore entitled to a share in the estate. The protestor however, qualifies under **Section 29 (2)** only if it is proved that prior to his death, he was maintained by the deceased herein.

7. Looking at the evidence tendered, there is no doubt that the protestor was actually living in the estate and by extension he was being looked after by the deceased prior to his death. It is only in that respect that this Court considers him a "dependant" and therefore entitled to a share in the estate.

8. This Court is however, unable to enforce his claim on half the estate as there is no evidence placed before the Court to establish his entitlement to half the estate. He told the Court that his late brother had chased him out of the estate and had a case before the elders and the local administrators. This Court however, is a succession court dealing with testate and intestate succession to the estates of deceased persons. There is no dispute that the property forming the estate (**MWERUA/KAGIOINI/98**) is registered exclusively in the name of the deceased person herein. The protestor though alleging that the deceased was a trustee did not place any evidence to prove the fact. It is also important to note that this Court does not deal with disputes over ownership of land *per se*, rather it deals with inheritance rights of parties who claim to be heirs or dependants to deceased persons. Where a person has claim over a property forming the estate but has no right as a beneficiary, the right cause is to take up the claim in a separate suit against the administrator/administratrix before a court with requisite jurisdiction to determine the claim.

9. Having found that the protestor has a right to claim the estate as a dependant under **Section 29 (2)** of

the **Law of Succession Act**, the next issue is to determine the mode of distribution. Before looking at provisions of the law, it is important to note that the protestor herein ranks second to the Petitioner and the children of the deceased in terms of entitlement to the estate. The provisions of **Section 29 (a) and (b), Section 66** of the **Law of Succession Act** and **Rule 71) (e) (iii)** of Probate & Administration Rules is clear on this and therefore it is important to note what underpins the decision of this Court in determining the mode of distribution of the estate. It must be further noted that distribution of an estate of an intestate person is well provided under the provisions of **Sections 35 and 40** of the **Law of Succession Act**.

10. The above provisions are applied where parties are in dispute over the mode of distribution. I have considered the suggestion by the protestor that the estate should be divided into two equal portions and be shared between himself and the Petitioner. However, the proposal is unsustainable in law. The protestor really has no right under the Law of Succession to claim ½ share in the estate. I have looked at the mode suggested by the Petitioner which appears more acceptable in law as the proposed mode has given almost equal share to all the dependants to the deceased including the protestor herein. Although she has proposed to have a slightly bigger share than the rest, though I do find that the other beneficiaries have no objection with her having the same as the widow to the deceased, the law must apply.

The upshot of this is that the protest filed herein is not sustained. The grant issued to the Petitioner on 5<sup>th</sup> July, 2011 is hereby confirmed and the mode of distribution shall be as follows:-

- i. Alexander Mugweru Gichunge the protestor herein, shall get 0.093Ha as proposed by the administrator and shall occupy the portion he has been occupying.
- ii. The remaining portion shall be distributed equally among the following beneficiaries:
  - a. Joyce Wanjiku Muna
  - b. John Kimani Muna
  - c. Alex Mugweru Muna
  - d. Edward Mwangi Joram
  - e. Lilian Wakio Githome
  - f. Fredrick Gichira Muna
  - g. Selmith Njeri Muriuki
  - h. Beth Wakini Muriuki
  - i. Francis Murimi Muna
  - j. Esther Wambui Maina

In order to bring this matter to an end, the District Surveyor is directed to go to that property known as **MWERUA/KAGIOINI/98** and ensure that the subdivision is carried out in accordance with the confirmed grant and ensure that the respective beneficiaries are shown the beacons respecting as much as possible where each beneficiary may have developed or put up a dwelling house so as to minimize as much as possible movement of houses. The surveyor's fees shall be shared out equally among all the beneficiaries. The Deputy Registrar shall sign requisite documents to facilitate transmission in the event that some beneficiaries become reluctant to cooperate. The District Land Registrar is also directed to dispense with productions of Personal Identification Numbers and Identity Cards by beneficiaries who may be reluctant to cooperate so that the beneficiaries can get their respective titles to their respective shares. It is so ordered.

*Dated and delivered at Kerugoya this 10<sup>th</sup> day of June, 2015.*

**R. K. LIMO**

**JUDGE**

10.6.15

Before Hon. Justice R. Limo

Court Assistant Willy

Edward Mwangi Joram present

Joyce Wanjiku Muna present

Alexander Mugweru Gichunge present

**COURT:** Judgment signed, dated and delivered in the open court in the presence of Edward Mwangi Joram, Joyce Wanjiku Muna and Alexander Mugweru Gichunge.

**R. K. LIMO**

**JUDGE**