



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI LAW COURTS
FAMILY DIVISION
SUCCESSION CAUSE NO. 1505 OF 2011

IN THE MATTER OF THE ESTATE OF LENARD MWAI KIMANI – DECEASED

ANNE WANGUI GIKUNI.....1ST APPLICANT

CECILIA WAIHERA KAMAU.....2ND APPLICANT

VERSUS

MARY S. WANJIKU MWAI.....1ST RESPONDENT

STEPHEN MAHEA MWAI.....2ND RESPONDENT

JUDGMENT

1. The deceased Lenard Mwai Kimani died intestate on 22nd October 2003. The respondents are daughter and son of the deceased. They were allowed by the family to petition for the grant of letters of administration. A grant was issued to them on 7th February 2012. On 21st December 2012 they filed an application for the confirmation of the grant. The application was opposed by the applicants who are two of the daughters of the deceased. They were opposed to the mode of distribution which they claimed was unfair, and that it gave them lesser portions just because they were of the female gender. According to the respondents, the objection was a change of heart as the applicants had filed a consent agreeing to the mode of sharing proposed in the affidavit in support of the application for confirmation.
2. There is no dispute that the deceased left the following children as the beneficiaries of his estate:-
 - a. James Kimani Mwai;
 - b. Stephen Mahea Mwai (2nd respondent);
 - c. James Mbuthia Mwai
 - d. Joseph Ngeche Mwai;
 - e. Alice Wanjiru Mwai;
 - f. Mary S. Wanjiku Mwai (1st respondent);
 - g. Cecilia Waithera Kamau (2nd applicant);
 - h. Anne Wangui Gikuni (1st applicant);
 - i. Anna Kamwende Mwai;

- j. Christine Ruguru Mwai; and
- k. Judy Wangari Kimani.

Their mother Priscilla Njeri Mwai died on 6th May 2009. The estate left by the deceased comprised the following parcels of land;

- a. Gatamaiyu/Kagwe/T.223 measuring 0.04 Ha;
- b. Gatamaiyu/Kagwe/T.222 measuring 0.04 Ha;
- c. Gatamaiyu/Kagwe/T.1272 measuring 1.214 Ha;
- d. Gatamaiyu/Kagwe/T.1273 measuring 1.010 Ha;
- e. Gatamaiyu/Kagwe/T.1274 measuring 0.0809 Ha;
- f. Gatamaiyu/Kagwe/T.1275 measuring 0.809 Ha;
- g. Gatamaiyu/Kagwe/T.1276 measuring 0.809 Ha;
- h. Gatamaiyu/Kagwe/T.1277 measuring 0.607 Ha;
- i. Gatamaiyu/Kagwe/T.1278 measuring 1.213 Ha; and
- j. Gatamaiyu/Kagwe/T.1279 measuring 0.809 Ha.

3. To the application for confirmation was annexed “consent to the confirmation of grant” signed by all these beneficiaries. It was signed before an advocate. The consent has not been denied. The beneficiaries also signed “consent to the mode of distribution of estate” and each indicated an identity card number after his/her name. Again, the consent has not been denied. The respondents’ case is that the objection to the application for confirmation is an afterthought by the applicants each of whom had provided the consent.

4. The sharing in the application for confirmation was as follows:-

- a. James Kimani Mwai – Gatamaiyu/Kagwe/1272;
- b. Stephen Mahea Mwai - Gatamaiyu/Kagwe/1273;
- c. James Mbuthia Mwai - Gatamaiyu/Kagwe/1274;
- d. Joseph Ngeche Mwai – Gatamaiyu/Kagwe/1275;
- e. Alice Wanjiru Mwai- Gatamaiyu/Kagwe/1276;
- f. Anna Kamande Mwai – Gatamaiyu/Kagwe/1277;
- g. Mary W. Wanjiku Mwai, Cecilia Waithera Kamau, Anne Wangui Gikuni and Christine Ruguru Nganga to equally share Gatamaiyu/Kagwe/ 1278 and 1279; and
- h. Gatamaiyu/Kagwe/T.223 and Gatamaiyu/Kagwe T.222 to be taken by Judy Wangari Kimani.

The applicants contend that the sharing was unequal, discriminatory and offended **Articles 27(1) and (5) and 60(1)(f)** of the Constitution of Kenya 2010 and **sections 35(5) and 45** of the **Law of Succession Act (Cap. 160)**.

5. Mr. Gachie for the petitioners/respondents and Ms Githui for the objectors/applicants filed written submissions which I have considered.

6. It is clear that all the beneficiaries of the deceased are equal before the law. Each is entitled to equal protection and equal benefit of the law. It is also true that none of them should be discriminated against on basis of gender, or on any other basis. However, the applicants consented to receiving lesser portions of land from the estate and, in so doing, renounced their claim to the equal sharing of the estate. They have not alleged that they were in any way duped into appending their signature. There is no claim of fraud or misrepresentation on the part of the respondents who obtained the consents. They cannot, I find, be allowed to depart from their signatures. In any case, if equality is the principle they seek to enforce why have they proposed in paragraph 11 of their joint affidavit in support of the objection to get 1.5 acres each when James Kimani Mwai is supposed to get 3 acres and Stephen Mahea Mwai to get 2.5 acres?

7. In short, I find the objection not merited and dismiss it. I allow the application dated 18th December 2012 for the confirmation of grant issued to the respondents. The estate shall be shared

in accordance with the “consent to the mode of distribution of estate’ dated 18th December 2012 and filed on 21st December 2012. This is a family dispute and therefore I make no orders as to costs.

DATED and DELIVERED at NAIROBI this 15th July 2015.

A.O. MUCHELULE

JUDGE