



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT KERUGOYA
SUCCESSION CAUSE NO. 302 OF 2012
IN THE MATTER OF THE ESTATE OF MUNACEWA
GIKORI alias MUNACEWA GIKURU.....(DECEASED)
AND
PETER NGARI MUNACHEWA.....PETITIONER
VERSUS
MILLICENT WAMBURA KIURA.....1ST PROTESTOR
JENNIFER GATURI MIIRI KIBUIKAH.....2ND PROTESTOR
JUDGMENT

1. This cause relates to the estate of the late **MUNACEWA GIKORI** (deceased). **PETER NGARI MUNACEWA**, a son to the deceased and the appointed administrator applied for confirmation of grant issued to him by this court on 21st December, 2012. In his summons for confirmation he proposed to have the only property forming the estate land parcel No. **NGARIAMA/RUNGETO/136** to be distributed equally between himself and **GRACE WANGARI MUNACEWA**.

2. **MILLICENT WAMBURA KIURA** and **JENNIFER GATURI MIIRI KIBUIKAH** (1st and 2nd protester), daughters to the deceased, filed affidavit of protest saying that they are also beneficiaries of the estate and deserve a share of it as daughters to the deceased. This Court gave directions that the protests by Millicent Wambura Kiura and Jennifer Gaturi Miiri and Douglas Njue Mugo be heard contemporaneously by way of oral evidence.

3. In his evidence, **Peter Ngare Munacewa** told this Court on oath that the deceased left behind seven (7) children two of whom were deceased at the time the petition was presented. He gave the names of the children as follows:

- i. Muriuki Munacewa (deceased)
- ii. Njagi Munacewa (deceased)
- iii. Serah Murangi

- iv. Millicent Wambura
- v. Grace Wangari
- vi. Peter Ngari (petitioner)
- vii. Jennifer Gaturi

4. The Petitioner further told the Court that his late brother Muriuki Munacewa had married two wives but that the wives left him and remarried but had children one of who is now one of the protestors herein, Douglas Njue Mugo. He stated that the estate comprises that property known as **L.R. NGARIAMA/RUNGETO/136** and measures around 8 acres. He said that although he had proposed to have the estate divided equally between himself and Grace Wangari, he told this Court that he was now willing to accommodate two other beneficiaries, **Gilbert Gichohi** and **Douglas Njue Mugo**. He therefore proposed to have the estate distributed as follows:-

- a. Gilbert Gichohi $\frac{1}{2}$ acre
- b. Douglas Njue $\frac{1}{2}$ acre
- c. Muchiri..... $\frac{1}{2}$ acre
- d. The remaining portion to be shared equally between himself and Grace Wangari.

5. The petitioner added that his proposed mode of distribution of the estate was based on the wishes of his late father. He asserted that the deceased wrote a Will and read it openly in the presence of elders and some beneficiaries. He however, stated that the original Will was misplaced and did not know where it was. He further added that the witnesses to the Will are all deceased save for one a **Mr. JOHN KIAMBITI** who could not come to testify as he was reportedly sick. He submitted that his sisters did not deserve to be given any share in the estate as they were married and had their own properties elsewhere and were stable financially.

6. **Grace Wangari** on her part associated herself with the evidence given by the Petitioner saying that the Will of their father needed to be respected and that her married sisters should not get a share because they are married.

7. The 1st and 2nd protestors strongly objected the proposed mode of distribution of the estate and denied knowledge of the Will.

Millicent Wambura (1st protestor) submitted that the estate should be distributed equally among the surviving children of the deceased and gave the following names:

- i. Peter Ngare
- ii. Grace Wangare
- iii. Millicent Wambura
- iv. Serah Murangi
- v. Jennifer Gaturi

She further told the Court that she did not recognize any other beneficiary and faulted the Petitioner for fetching for them after they had filed their protest.

8. The 1st Protestor further added that his late brother, Muriuki Munacewa was sick for a long time and no one took care of him or looked after him when he was alive and that if he had children or a wife or wives they could have even visited him when he was ill.

9. She further argued that their late father never gave any portion of land to any child as no child was given any title deed. She insisted that there was no Will and all the children deserved to get their equal share. She faulted the Petitioner for bringing strangers to the cause saying that the Petitioner did not mention them when he petitioned for letters of administration. She insisted that his late brother Mr. Muriuki was not married and that Gilbert Gichohi is a grandchild to her sister and would get a share by virtue of that.

10. **Jennifer Gaturi Miiri** the 2nd Protestor equally demanded a share of the estate insisting that as a child of the deceased she deserved to be given equal share with everyone else. She supported the 1st Protestor by stating that Douglas Njue (3rd protestor) was not a son to their deceased brother, Mr. Muriuki and challenged him to produce his identity card to prove the claim that he was a son to the late Muriuki. She also said that Gilbert would benefit from the share of his sister, SERAH MURANGI who deserves a share because she is a daughter to the deceased and alive. He accused his brother, the Petitioner for introducing the 3rd protestor saying that the same was done for selfish reasons. She told this Court that the said Douglas Njue never stepped into the estate when her late brother Mr. Muriuki was alive and has never come back to the estate even after the demise of the said Muriuki.

11. **Douglas Njue Mugo** the 3rd protestor on his part told this Court That he was the grandchild to the late Munacewa Gikori the deceased herein. He further said that his father was called Gikori Munacewa and that he left with his mother when he was 2 years old. He further added that his mother Grace Kothii has 2 other children who are under his care. He conceded that his mother re-married and that his identity card reflects the name of his current father whom he found taking care of him. He said that his name is Mugo and that is why his identity card reflects that name as his surname. He said that he found it hard to tell his mother to take him back to his biological father as he learned the fact when he was already an adult. He insisted that he used to meet his biological father in work place and had some discussions which however were not honoured by deceased.

12. I have considered all the oral evidence tendered by all the parties in this cause. The first issue to be considered is who the beneficiaries or dependants to the estate of Munacewa Gikori are. **Section 29** of the **Law of Succession Act** gives the definition of a dependant as follows:-

“The wife, or wives, or former wife or wives and the children of the deceased whether or not maintained by the deceased immediately prior to his death.”

This definition shows that all the children of the deceased in this cause qualify to be considered as dependants of the late Munacewa Gikori. The following are therefore dependants in law to the deceased:

- i. Peter Ngare Munacewa
- ii. Grace Ngare Munacewa
- iii. Sarah Murangi
- iv. Millicent Wambura Kiura
- v. Jennifer Gaturi Miiri

13. The law also provides the next line of dependants under **subsection (b)** of **Section 29** and provides as follows:

“such of deceased’s parents, step parents, grand parents, grandchildren, step children, children

whom deceased had taken into his family as his own, brother, sisters and half brother and half sisters as were being maintained by the deceased immediately prior to his death.” (emphasis added).

This means that for any of the above to qualify to be considered a ‘dependant’ and therefore entitled to a share in the estate he/she need not only to establish any of the described relationship to the deceased but must prove that the deceased prior to his/her death actually maintained him/her or took care of him/her.

14. The above subsection does deal with the question of the 3rd protestor on whether he qualifies to be considered a dependant within the meaning given above. Douglas Njue Mugo, the 3rd protestor told this Court that he is grandchild to the deceased. He however, told the Court that he left with his mother when he was 2 years old and that he was brought up by the man who remarried his mother. He further conceded that his identity card reflected the name of the father who brought him up. Although the Petitioner maintained that he recognized him as a biological son to his late brother, there was no evidence placed before me to prove the relationship between the 3rd protestor and the deceased in this cause. There is also no evidence that the deceased prior to his death took care of him or maintained him in any way. The law does not recognize him as a dependant as such and cannot claim any share in the estate of the late Munacewa Gikori.

15. This Court further finds that the Petitioner was less than candid in the light of his affidavit sworn on 21st November, 2012 and 6th January, 2014 where he clearly stated on oath that the deceased left behind only the five named dependants under paragraph 4 and paragraph 2 respectively. The introduction and recognition of the 3rd protestor by the Petitioner is an afterthought and is not backed by any evidence. In fact under paragraph 3 of his affidavit sworn on 6th January 2014 he deposed that there were no other dependants.

16. Upon determining who the dependants are in this cause, the only remaining issue for determination is the issue of mode of distribution among the beneficiaries. The Petitioner’s suggested mode of distribution is not backed by the law. It is clear that the deceased herein died intestate. The Petitioner himself when petitioning for letters of administration swore an affidavit sworn on 21st November, 2012 under paragraph 4 that the deceased died intestate i.e. without a written Will. The Petitioner attempted to justify the mode of distribution of the estate by saying that that was the will of his late father. He could not however, prove the same saying that the original Will was lost. It is therefore clear that the only legal assumption that can be made in the circumstances is that the deceased died intestate. The law provides how the property or the estate of such persons is to be distributed. **Section 38** of the **Law of Succession Act** provides that where an intestate person leaves no surviving spouse but children the net estate shall be divided equally among the surviving children. That is the position of the law and the law in so far as the deceased herein died after enactment of the **Law of Succession Act** (1st July, 1981) does not have room for customary practices. The argument that married daughters are not entitled to inherit property from their late parents is a misnomer.

17. The law does not discriminate on the basis of gender. All children/dependants are equal in the eyes of the law. In fact under **Article 27 (4)** of the Constitution discrimination on the basis of sex, race, marital status among other forms of discrimination is outlawed. This Court finds that the 1st and 2nd protestors have a right under **Article 27 (1)** and **(3)** of the Constitution to be treated equally like the Petitioner or any other dependant in this cause.

18. In the light of the above position of law, the estate in this cause comprised in that property known as **L.R. NO. NGARIAMA/RUNGETO/136** will be shared equally among the following dependants:

1. SARAH MURANGI
2. MILLICENT WAMBUI KIURA
3. GRACE WANGARI MUNACEWA

4. PETER NGARI MUNACEWA

5. JENNIFER GATURI MIIRI KIBUIKAH

19. The grant issued on 25th January, 2013 is hereby confirmed as per the above mode of distribution. This being a family matter each party shall pay their own costs.

In order to bring this matter to rest, this Court under **Section 47** of the **Law of Succession Act** does direct the County Surveyor to visit the estate or that property known as **NGARIAMA/RUNG'ETO/136** and carry out sub-division as per the confirmed grant herein with security to be provided by local administration. The District Land Registrar do dispense with production of identity card or personal identification number of those beneficiaries who may be reluctant to cooperate. The Deputy Registrar of this Court shall execute transmission forms for those beneficiaries who may be reluctant to cooperate and execute the same. The surveyor's fees shall be shared out equally among the five beneficiaries. It is so ordered.

Dated and delivered at Kerugoya this 17th day of July, 2015.

R. K. LIMO

JUDGE

17.7.2015

Before Hon. Justice R. Limo

Court Assistant Willy

Peter Ngari present

Douglas Njue present

Millicent Wambura present

Jennefer Gaturi present

Grace Wangari present

Gilbert Gichobi present

COURT: Judgment dated, signed and delivered in the presence of Peter Ngari, Douglas Njue, Millicent Wambura, Jenniffer Gaturi, Grace Wangari and Gilbert Gichobi and translated in Kikuyu a language all the parties say they understand.

R. K. LIMO

JUDGE