



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

SUCCESSION CAUSE NO. 159 OF 2006

**IN THE MATTER OF THE ESTATE OF M'MURITHI M'IKIAMBBI alias M'MURITHI
M'KIAMBATI (DECEASED)**

JULIUS MUTHEEE M'MURITHI PETITIONER

-VERSUS-

PETER MUTHAURA M'MURITHI OBJECTOR

JUDGMENT

The petitioner herein is brother to the objector PETER MUTHAURA M'MURITHI. The petitioner through a petition dated 26th May 2006 petitioned for grant of letters of administration to the estate of M'Murithi M'Kiambi alias M'Murithi M'Kiambati who died on 8th August, 1996 naming the deceased surviving heirs as himself, the objector and Harriet Nkoroi M'Murithi. The application for grant of letters of administration intestate to the estate of M'Murithi M'Kiambi was gazetted in Kenya Gazette on 1st September, 2006. That temporary grant of letters of administration were issued to the petitioner on 30th January, 2007. That by an application dated 17th October, 2007 the petitioner sought the grant issued to him to be confirmed. In the application for confirmation of the grant he named all the deceased beneficiaries including the objector but sought to have a bigger share because he was caring for his deceased parents alone.

The objector filed an affidavit of protest against the confirmation of the grant. That on 27th October, 2007 court directed the protest be heard by way of oral evidence.

That both the objector and the petitioner gave oral evidence in respect of their opposing positions and called no witness.

The objector's case is that the petitioner is his brother. That the petitioner secretly petitioned for grant of letters of administration of their father's estate and without having reached any agreement as between themselves as to who should be the administrators. He argued that he should be a joint administration. He further stated that the deceased was survived by two sons and no daughter however on cross-examination he admitted Harriet Nkoroi M'Murithi is their sister and is entitled to the deceased estate. He also admitted on being asked to pay for the fees for seeking grant of Letters of Administration to the deceased estate he failed to do so leading to the petitioner to proceed to seek grant alone. The petitioner on his part acknowledges the objector and Harriet Nkoroi M'Murithi as his own siblings and entitled to the deceased estate being **ABOTHUGUCHI/KATHERI/486**. He averred that the three agreed before Assistant Chief to raise money to petition for grant of Letter of Administration of the estate for their deceased father but the objector and Harriet Nkoroi M'Murithi failed to do so. He further averred that all the three are entitled to the deceased estate but in different shares. He has no objection to the three being

declared joint administrators.

The issue for determination is whether the petitioner petitioned for grant of Letters of Administration the deceased estate secretly and without consent or knowledge of the objector and further who are entitled to share the deceased estate.

The Law of Succession Act under Section 29(a) defines the “dependants” to mean as follows:-

“29(a) 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;”

The deceased according to Form P&A 5 filled and filed by the petitioner on 26th May 2006 was survived by Harriet Nkoroi M’Murithi, daughter to the deceased, married, Peter Muthaura M’Murithi, described as a nephew and Julius Muthee M’Muriithi, petitioner also described as the deceased nephew. The chief’s letter dated 1st March, 2006 confirms that position. The objector and petitioner admitted that the deceased was survived by the three but as daughter and sons respectively. The petitioner in his evidence stated that the three met before Assistant Chief and all agreed to petition for the grant of letters of administration. That each was to raise fees for petitioning for the grant of letters of administration but the objector and Harriet Nkoroi refused to raise the agreed fees.

The objector did not controvert the petitioner’s evidence on the point. I find that the objector was aware of the petitioning for the grant of Letters of Administration of the deceased estate as he was part of the team that met before the Assistant Chief when the three agreed to petition for the grant. The petition was not done secretly and without his knowledge or consent as alleged.

He declined to make his contribution and he was only trying to blame the petitioner for his failure to honour his part of the agreement. I find that the petitioner has acted rightly and correctly in petitioning for the grant of Letter of Administration in respect of the deceased alone as allowing all beneficiaries to be administrators shall delay finalization of distribution of the deceased estate. Since the beneficiaries cannot agree on the way forward. I therefore order in the interest of justice that the petitioner do proceed to be the sole administrator and do proceed with his application for confirmation of the grant and any party aggrieved by the scheme of distribution as drawn and filed be at liberty to file his or her own scheme of distribution.

On issue of who is entitled to share of the deceased estate, I have considered Form P&A 5, Chief’s letter and evidence of the objector and the petitioner in which there is no dispute. The deceased beneficiaries are Harriet Nkoroi M’Murithi, Peter Muthaura M’Murithi and Julius Muthee M’Murithi. I therefore find and hold that the above three named beneficiaries are entitled to share of the deceased estate. The respective share of each beneficiary should be determined at the time of hearing of the application for confirmation of the grant. I therefore order that the application for confirmation of the grant be set down for determination of each party’s respective share.

Having stated the above I find no merits in the objector’s protest and the same is dismissed but as the parties are brothers I order each party to bear its own costs.

DATED AT MERU THIS 13TH DAY OF FEBRUARY, 2014.

J. A. MAKAU

JUDGE

Delivered in open court in the presence of:-

Objector in person – present

Petitioner in person – present

J. A. MAKAU

JUDGE