



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

SUCC. CAUSE NO. 653 OF 2009

IN THE MATTER OF THE ESTATE OF LAWRENCE M'MUNGANIA

ALIAS LAWRENCE MATEREU.....DECEASED

MARGARET MUKOKINYA.....APPLICANT

VERSUS

SUSAN MUTHIRU.....RESPONDENT

R U L I N G

The 1st petitioner MARGARET MUKOKINYA and the 2nd petitioner SUSAN MUTHIRU were by court's ruling dated 3rd March, 2011 issued with grant of letters of administration of the estate of Lawrence M'Mungania Alias Lawrence Materu in their joint names and each of the administrator granted leave to file summons for confirmation of grant of letters of administration before the expiry of 6 months from the date of the ruling.

On the 15th March, 2011 the 1st petitioner filed an application for confirmation of grant of the estate of Lawrence M'Mungania alias Lawrence Materu(deceased) seeking the deceased intestate estate be distributed in terms of paragraph 6 of her supportive affidavit.

The 1st petitioner deponed that the deceased passed on intestate on 1/10/2001 and was survived by the 1st petitioner, a widow, Mary Kuunanku and Mercy Kagwiria, daughters from the 1st house, Susan Muthiru, a widow, Jacob Mwenda, a son, Isaiah Muratanya, a son, Agnes Kathambi, a daughter and J T a son(Minor) from the second house.

The 1st petitioner mentioned Florence Kagendo, Esther Karimi and Doris Makena, being nieces to the deceased as dependants also by virtue of being deceased's brothers children who were brought up by the deceased herein and the 1st petitioner.

The 1st petitioner averred that the deceased estate comprises of :-

1. *L.R. No.Njia/Liburu/26 Tea Scheme, which according to the 1st petitioner the deceased, had during his life-time, shared equally between the 1st and 2nd house equally.*
2. *P/No. 4349-1 acre, P/No.6907-0.50 acres and P/NO.5683-0.20 acres situated at Kangeta Adjudication Section.*

3. Account No.0301387809 with Barclays Bank which was shared equally between the petitioner by Maua Court and each got and appropriated her share.

The 1st petitioner further deponed that during the lifetime of the deceased, he wished and advised that P/NO.6907 of 0.50 acres be inherited by the three nieces in equal portions. That the other 3 parcels of land be shared equally between the petitioners and each of the petitioner to hold her share in trust for herself and her household and their children to share the same equally upon their demise. That on sharing the land each household or widow and her children to remain on the side each has either built, developed and, cultivated or occupied. The 1st petitioner has also deponed that herself and her co-wife live and grow tea on L.R. No.Njia/Liburu/26 Tea scheme on equal portions and that at the moment no one utilizes the parcel NO.5683.

The 2nd petitioner on the other hand filed a replying affidavit listing all the beneficiaries as listed by the 1st petitioner, however she has listed Mercy Kagwiria as not as a daughter of the 1st house but a niece to the deceased. The 2nd petitioner depones that Florence Kagendo is daughter of the sister of the deceased she agrees the other three nieces were brought up by her late husband and their mother. The 2nd petitioner is also in agreement with the list of the deceased assets as set out by the 1st petitioner in her affidavit in support of application for confirmation of the grant. The 2nd petitioner under paragraph 7 of her replying affidavit deponed that she respects and agrees with the mode of distribution as per the wishes and desire of the deceased and prayed that the net intestate be distributed in terms of paragraph 6(a) and (b) of her affidavit in that:

(a) L. R. No.Njia/Liburu/26 Tea Scheme be shared equally among his children and dependants.

(b). P/No's 4369- 1 acre, P.NO.6907- 0.50 acres and 5683 0.20 acres be shared amongst sons of the deceased only.

When the matter came up for submissions Mr. Calpeters Mbaabu learned Advocate for the 1st petitioner relied on his submissions dated 23/6/2011 and prayed the deceased estate be shared equally between the two petitioners who represent the deceased two houses. He submitted that P/No.6907 should be distributed to the three dependants being nieces to the deceased who brought them up and by virtue of being children of the deceased's brother who is also deceased.

Mr. Kirima, learned Advocate for the 2nd petitioner on his part relied on his submissions dated 7th September, 2011 arguing that the deceased died intestate leaving his two widows and a number of children who are all adults save one who is a minor; plus three nieces. He argued the estate should be shared as per number of dependants arguing that the idea of houses will defeat the provisions of law of Succession Act. On utilization of the land he argued that applied when the deceased dependants were small but since the situation has changed as dependants are adults he sought that the estate be shared amongst all the dependants.

I have carefully considered the application for confirmation of the grant of the deceased estate, the affidavit in support and replying affidavit in opposition as well as the written submissions by both counsel. The court has also considered the oral submissions by both counsel in respect of their opposing positions.

The issue for consideration is how the deceased estate should be distributed to all the deceased beneficiaries. The 1st petitioner and 2nd petitioner in their respective affidavits and in their advocate's submissions are in agreement that all the listed dependants by each party are entitled to a share of the deceased estate.

I have carefully considered the relationship of the listed dependants by both parties and agree all fall under the meaning of the "dependants" under Section 29 of the Law of Succession Act and hold all the 11 listed dependants are beneficiaries to the deceased estate.

On the mode of distribution, the deceased having died on 1/10/2001 after the Law of Succession Act, having come into force with effect from 1st July, 1981 the estate of the deceased herein is subject to the Law of Succession Act(Cap.160) but not under customary law.

Section 2(2) of the Law of Succession Act provides:-

“2. (1) Except as otherwise expressly provided in this Act or any other written law, the provisions of this Act shall constitute the law of Kenya in respect of, and shall have universal application to, all cases of intestate or testamentary succession to the estates of deceased persons dying after the commencement of this Act and to the administration of estates of those persons.

(2) The estates of persons dying before the commencement of this Act are subject to the written laws and customs applying at the date of death, but nevertheless the administration of their estates shall commence or proceed so far as possible in accordance with this Act.”

In view of the aforesaid Section the mode of distribution of the deceased estate herein is subject to provisions of Section 40 of the Law of Succession Act which provides:-

“40. (1) Where an intestate has married more than once under any system of law permitting polygamy, his personal and household effects 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.

(2) The distribution of the personal and household effects and the residue of the net intestate estate within each house shall then be in accordance with the rules set out in sections 35 to 38.”

In view of the submissions by parties and the provisions of the above-mentioned Section of the Law of Succession Act, I find the proposal by 2nd petitioner to be fair and just and prefer to adopt the same taking into account all the interest of the parties and doing the best I can in the interest of justice the following properties shall be distributed as follows:-

(a) L. R. Njia/Liburu/26 tea scheme be shared as follows:-

- I. Mary Kuunanku - 0.5 acres
- II. Silas Muratanya - 1.00 acres
- III. Jacob Mwenda - 1.00 acres
- IV. James Thurania - 1.00 acres
- V. Mercy Kagwiria - 0.5 acres
- VI. Agnes Kathambi - 0.5 acres
- VII. Balance to be shared equally to Margaret Mukokinya and Susan Muthiru.

(b) Plot No.4390(1 acre) Kangeta Adjudication Section be shared equally amongst deceased three nieces namely:-

- I. Florence Kagendo
- II. Esther Karimi
- III. Doris Makena

(c) Plot NO.6907 Kangeta Adjudication Section (0.50 acres) be shared equally amongst the two petitioners namely:-

- I. Margaret Mukokinya and
- II. Susan Muthiru

(d) P.No.5683 Kangeta Adjudication Section (0.20) acres be shared equally amongst the

following:-

- I. **Jacob Mwenda**
- II. **Silas Muratanya**
- III. **J T**

(e) That the petitioners are widow of the deceased and the property in issue belong to the late husband each party shall bear its own costs.

DATED, SIGNED AND DELIVERED AT MERU THIS 12TH DAY OF MAY, 2014.

J. A. MAKAU

JUDGE

Delivered in Open Court in presence of:-

Mr. C. Mbaabu for the plaintiff – petitioner

Mr. Kirima for the 2nd petitioner – 2nd petitioner.

J. A. MAKAU

JUDGE