



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

SUCC NO. 538 OF 2009

IN THE MATTER OF THE ESTATE OF COSMAS M'THURANIRA M'MAGIRI-DECEASED

MARGARET NCHEKEI THURANIRA.....PETITIONER

VERSUS

MARY MPINDA.....1ST PROTESTOR

REBECCA KARWITHA M'MAGIRI.....2ND PROTESTOR

J U D G M E N T

1. The petitioner, wife to the deceased herein petitioned for grant of letters of administration in respect of the deceased estate through a petition dated 27th October, 2007 in which she listed the deceased's dependants as herself and her 9 children as per Form P&A 5 and attached Chief's letter dated 21st October, 2009. The Grant of Letters of Administration intestate was issued to her on 11th June, 2010. She subsequently filed summons for confirmation of grant of letters of administration on 17th December, 2010 seeking distribution of the deceased property to herself and her children giving each various shares.

2. The protestors filed an affidavit of protest dated 7th January, 2011 stating inter alia:- that the deceased Cosmas M'Thuranira M'Magiri was an objector in L.D.T 59/2000 whereas the protestors were claimants; that they were awarded 3 acres each from land Parcel No. Kiirua/Naari/1363 as per attached copy the award "RK1", that the objector appeal but his appeal at the Provincial Disputes Tribunal was dismissed as per annexure "RK3". That the objector appealed to the High Court in Civil Appeal No. 72 of 2006 but the same was dismissed as per annexure "RK3" that petitioner declined to include the objectors as beneficiaries of the deceased estate. The objector prayed to be provided according to the award as their application for transfer of the land they were advised to file their claim in the present Succession Cause.

3. The petitioner countered the objectors protest through her replying affidavit to affidavit in protest of confirmation of grant dated 4th February, 2011 whereby she deposed inter alia; that the protestors are misguided and misdirected to protest the confirmation of grant in disrespect of her deceased husband estate as the tribunal was wrong in its decision and had no jurisdiction to adjudicate over the matter; that the protestors have no basis to continue claiming share of the estate as they did not do so during his lifetime; that this is due to the fact that land parcel No. Kiirua/Naari/Maitai 1363 was in a settlement area given to the deceased by a committee handling settlement schemes a fact clearly shared by the deceased during the tribunal hearing; that the said land was originally known as Kiirua/Naari/741 prior to sale of 1 ½ of an acre excised from it to Nkunga Catholic Church by the deceased and an objection was raised in

respect of the said sale; that the said land solely and exclusively belongs to the beneficiaries of the estate of the deceased who in the instant case are his immediate family members; and that the exclusion of the objectors is in order as the family land is at Nthimbiri and their fixation on her deceased husband's land is totally misguided. The petitioner therefore prayed the court to confirm the mode of distribution as stated in her supporting affidavit for confirmation of the grant as all deceased beneficiaries are provided for.

4. That the parties advocates sought directions that the protest be determined by way of written submissions. The protestors learned counsel Mr. K. Muriuki filed his submissions on 25th June, 2014 whereas Mr. Rimita learned Advocate for the petitioner filed his submissions on 8th July, 2014.

5. The court has carefully considered the petitioners mode of distribution, the affidavit in support, the objector's protest and petitioners reply to the affidavit of protest. The written submissions by both counsel and the authorities relied upon and annexures thereto. The issue for consideration is whether the objectors protest is merited and whether the same should be granted or not. lastly what is the reasonable and justifiable mode of distribution of the deceased estate and amongst who?

6. There is no dispute in this cause that the deceased is step-brother to the objectors herein and that the objectors had sued the deceased at Meru District Land Tribunal Case NO. 15 of 2000 as per annexure "RKI". The tribunal found the objectors mother was allocated land by committee members at Naari-Maitei and further noted the same was registered in the deceased name as the objectors mother who was the owner of the land did not have national identity card. The tribunal held as the objector's mother had no land at Nthimbiri, the original home, each of the objectors be awarded 3 acres from land Parcel Kiirua/Naari/Maitei/1363 and the deceased to remain with 12 acres. The deceased filed Appeal to Eastern Provincial Land Dispute Appeal Committee at Embu Appeal No. 134/2000. The Appeals Committee dismissed the deceased appeal and upheld the decision of the Meru Central District Land Tribunal on 26/6/2005. The deceased filed at Meru High Court Civil Appeal No. 72 of 2006 which appeal was struck out on 26th August, 2009. In essence the decision awarding the objectors 3 acres each stands.

7. The objectors claim is based on the Land Disputes Tribunal award which was subsequently upheld by the appeals committee. The objectors claim as beneficiaries as the land initially was acquired by their mother but could not be registered in her name as women by then did not have National Identity cards. The deceased was registered as trustee to the objector's mother. The objectors are dependants to their late mother as defined under **Section 29(a) of The Law of Succession Act** and are entitled to share of their late mother's land registered in the deceased's name for the purpose of holding the same in trust for the objector's deceased mother.

8. The tribunal's decisions which decisions have not been overturned acknowledge the objector's interest over the disputed land whether one sees them as beneficiaries or creditors to the deceased estate by virtue of **Section 66 of the Law of Succession Act** and as such they are entitled to lay a claim over 3 acres each of the suit land Kiirua/Naari-Maitei/1363.

9. The petitioner's counsel in challenging the objectors claim raised the issue of jurisdiction and relied on case of:- **DOMINICA WAMUYU KIHU VERSUS JOHANA NDURA WAKARITU C.A. NO. 269 OF 2007**. This is not an issue before this court at this stage and if it is allowed to be considered at this stage it would amount to reopening the respondent a case that has been decided and determined. That at any rate the issue that was dealt with by the tribunal fell squarely under section 3(I) of the Land Dispute Tribunal Act (repealed). I need not say more on the issue of jurisdiction as what I have stated herein above is enough. The petitioner's counsel raised the issue of Tribunal award made in 2000 as being time bad by virtue of section 4(4) of the Limitation of Actions Act (Cap 22) Laws of Kenya and relied on case of:- **PETER KIRUKI M'NKANATA Versus SABELA NCEKEI KIRIMA CIVIL APPEAL NO. 313 OF 2010 (NYERI)**.

10. In the instant case the Meru Land Disputes Tribunal decision was made in 2000. The Appeals Committee decision was made on 26/06/2005 and the High Court decision made on 26th August, 2009.

The protest was filed on 17th July, 2011 within time and before beyond 12 years had expired since the matter had concluded. I find that the judgment sought to be executed is within time and is not time barred as contested by the petitioner. I further find as earlier on pointed out that the objectors claim and/or interest is dealing with the administration of the deceased estate and is not based out of the succession cause. The authority referring to the case of **MERU H.C. JUDICIAL REVIEW APPLICATION NO. 15/2010 ANDREW MEEME MWERERIA Versus LAND REGISTRAR IGEMBE SOUTH DISTRICT & ANOTHER** by the petitioner is not applicable in this case for reasons already stated in my judgment.

11. In view of the foregoing I am satisfied that the objectors protest is merited and ought to be granted in terms of the decision of the Tribunal and Appeals Committee. I am also satisfied that the objectors are beneficiaries and/or creditors by virtue of the tribunal's decision and Appeals Committee decision which has not been overturned or successfully appealed against.

12. On the distribution of the deceased estate the objectors shall get each 3 acres as ordered by the tribunal and confirmed by the Appeals Committee leaving a balance of 12 acres to the deceased estate. The petitioner's proposal to distribute the whole land to herself and her children cannot therefore be entered as they are only entitled to 12 acres. The court proposes to adjust the petitioner's proposal of distribution limiting it to 12 acres and award each of the protesters 3 acres as ordered by the Tribunal.

13. The upshot of the matter is that the protest succeeds. The deceased estate shall be distributed as follows from L.R. KIIRUA/NAARI/MAITEI/1363

1. **Protester's/Objectors**

- (a) **MARY MPINDA M'MAGIRI** – 3 ACRES
- (b) **REBECCA KARWITHA M'MAGIRI** – 3 ACRES

2. **Petitioner's side**

- (a) **MARGARET NCEKEI THURANIRA** – 2 ACRES
- (b) **PAUL MUTHURI THURANIRA** – 1 ½ ACRES
- (c) **MICHAEL MURITHI COSMAS** – 1 ½ ACRES
- (d) **MATHEW KIMATHI THURANIRA** – 1 ½ ACRES
- (e) **FRANKLINE MUNENE THURANIRA** – 1 ½ ACRES
- (f) **AGNES NKIROTE THURANIRA**
- (g) **CATHERINE KENDI COSMAS**
- (h) **CICILIA NTINYARI THURANIRA** 2 ACRES to hold jointly in
- (i) **LUCY KAIRUTHI THURANIRA** equal shares
- (j) **MARGARET NCEKEI THURANIRA**
PAUL MUTHURI THURANIRA
MICHAEL MUTHURI COSMAS
MATHEW KIMATHI THURANIRA Each to get 0.22acres

FRANKLINE MUNENE THURANIRA

designated as plots

AGNES NKIROTE THURANIRA

CATHERINE KENDI COSMAS

CICILIA NTINYARI THURANIRA

LUCY KAIRUTHI THURANIRA

(k) **L.R. NO. NGOBIT/ SUPUKO/ BLOCK 5/325 (South Imenti) to MARGARET NCHEKEI THURANIRA.**

3. The protestors/objectors are awarded costs of this cause.

DATED, SIGNED AND DELIVERED AT MERU THIS 13TH DAY OF NOVEMBER, 2014

J. A. MAKAU

JUDGE

Delivered in open court in presence of:-

1. Mr. K. Muriuki for Protestor/objector

2. Mr. Rimita for Petitioner

J. A. MAKAU

JUDGE