



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**

**AT MERU**

**Succession Cause 140 of 1998**

**IN THE MATTER OF THE ESTATE OF KIRIIKA MARARA .....DECEASED.**  
**BEATRICE KOORU M'MUGAMBI.....PETITIONER**  
**V E R S U S**  
**LAWRENCE GUANTAI.....OBJECTOR**

**Law of Succession Act**

- Benefits previously granted to any child, grandchild or house to be taken into account in any subsequent distribution of the deceased's net intestate;
- Daughters and sons unless one renounces an inheritance in favour of the other are equally entitled to inherit their parents estate.

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**JUDGEMENT**

The late|Kirika Marura who died on 8<sup>th</sup> July 1983 was survived by the following seven daughters and a step son-

1. Susan Kajuju - daughter married
2. Jennifer Mbuthu - daughter married
3. Beatrice Kooru - daughter married
4. Evangeline Karimi Mugambi - daughter married
5. Elizabeth Muthoni Cesari - daughter married
6. Beatrice Wanja - daughter married

7. Jennifer Ruguru - daughter married
8. M'Murugu Gakiira - Step son.

Un-known to Beatrice Kooru M'Mugambi, the stepson – son Mburugu Gakiira filed Succession Cause No. 280 of 1995. This cause was confirmed and a certificate of confirmation of the grant was issued on 31.08.1999 and the whole of the land known as title Number ABOGETA/U.KIRINGA/202 was distributed to the Petitioner in that cause, Mburugu Gakiira, the stepson, to the exclusion of all the daughters of the late Kirika Marura.

Perhaps unknown to M'Mburugu Gakiira, or inspite of it, Beatrice Kooru M'Mugambi too filed Meru High Court Succession Cause No. 140 of 1998 and sought to be appointed the administrator of her father's estate, and she too was issued with a Grant of Letters of Administration. Intestate on 22<sup>nd</sup> December 1999. Her temporary Grant was also confirmed and in a Certificate of Confirmation of a Grant was issued on 16<sup>th</sup> December 1999, and the same parcel of land title Number Abogeta/U.Kiringa/2002 was distributed to 6 grand-children of the late Kirika Marura by the various daughters. That distribution brought instant conflict with the family of Mburugu Gakiira who had since died and his place taken by his son, Lawrence Guantai, as Objector to the distribution of the said parcel of land.

On the application of Mburugu Gakiira dated 12.11.2000, the two causes of were consolidated by a Ruling delivered by Hon. Mr. Justice Kasanga Mulwa on 19<sup>th</sup> August 2002 and file No. 140 of 1998 became the record or running file. Lawrence Guantai, the Objector herein was substituted in place of his father Mburugu Gakiira who had died on 28.02.2001.

A further consent order formally consolidating the two causes was made on 16.10.2006 by the Hon Mr. Justice Lenaola. The confirmed Grants in both causes (280 of 1995 and 116/1998) were revoked and annulled, and Beatrice Kooru M'Mugambi was ordered to be issued with a fresh Grant of Letters of Administration to the estate of the late Kirika Marura. The said Beatrice Kooru M'Mugambi was also ordered to file her application for confirmation of Grant within 21 days and to serve the same on M/s L. K. Kiara & Co. Advocates for Lawrence Guantai Mburugu.

The Summons for confirmation dated 27.10.2006 was filed on the same day and was served upon the L. K. Kiara & Co. Advocates for the Objector.

When this matter was mentioned before me on 15.10.2008, Mr. Kimathi, learned counsel for the Objector informed the court that both parties had agreed that they are each entitled to part of the estate, but had not agreed on the area each party was entitled to. The Petitioner had proposed that the Objector be given a share equal to the share of each of the children of the deceased, Kirika Marura. The Objector was however insistent on sharing the net estate equally between his and the family of the estate of the late Kirika Marura. Mr. Kiara suggested that in view of the two parties divergent positions, the respective counsel give written submissions.

In response Mr. Kiara's proposed, Mr. Mburugu learned counsel for the Petitioner informed the court that the Objector is a distant nephew of the deceased, and that the Petitioner being the daughter of the deceased Kirika Marura was willing to give a share of the estate to the children of the deceased.

In turn and in response to the two positions, I ordered the respective parties Advocates to file and exchange written submissions on their respective clients proposals on distribution of the deceased's net intestate namely land parcel Title No. Abogeta/U.Kiringa/202.

The Objector's counsel Mr. Kiara filed his submissions on 5.11.2008 but it is dated 3.11.2008. Those of the Petitioner's counsel Wilson P. Mburugu & Co. were dated 10.11.2008 and were filed a day later on 11.11.2008.

As expected respective submissions followed the submissions made to me orally on 15/10/2008. The Objector's counsel maintained an equal division of the will intestate estate between the Petitioner and

members of her family and that of the Objector. That submission in effect meant that of the 15.5 acres comprised in land title No. Abogeta/U.Kiringa/202, the Objector's family and that of the Petitioner would each receive 7.25 acres.

The Petitioner's family through the submissions by their counsel, P. Wilson P. Mburugu Esq. objected to this proposal, and submitted that in law, a distant cousin cannot inherit the property of a deceased relative who has his own children and that the Objector and his family are not entitled to any share of the deceased's estate. The Petitioner however, submitted that considering the time matter has taken and as a matter of magnanimity the Petitioner and her sisters were ready to take the Objector as an additional unit to the six sons of the seven daughters and the seven of them equally share land reference No. Abogeta/U.Kiringa/2002.

The Petitioner therefore suggested that the said parcel of land be distributed as proposed in the Petitioner's Affidavit in support of the Application for confirmation of the Grant sworn on 27.10.2006.

The principles upon which an intestate's net estate will be distributed are set out in Section 35(5) of the Law of Succession Act, (Cap 160, Laws of Kenya). Section 35(5) says

S. 35 (1) .....

(2) .....

(3) .....

(4) .....

(5) Subject to the provisions of sections 41 and 42 and subject to any appointment or award made under this section the whole of the residue of the net intestate shall on the death, or in the case of a widow, remarriage of the surviving spouse, devolve upon the surviving child, if there be only one, or be equally divided among the surviving children.

In this matter, there is no question that the surviving children of the deceased were his daughters. The petitioner, one of the deceased's surviving children does however acknowledge Mburugu Gakiira was a distant cousin who used to live with them as they had no brother, and are therefore prepared to treat him or his son Lawrence Guantai Mburugu as an additional unit for purposes of distribution of the said residue of the net intestate estate.

I do not think that the objector can successfully resist this offer, from a legal stand point. The Objector's father was motivated by the fact that the deceased Kirika Marura having had no son, and all his daughters having been married, he by virtue of having lived with the deceased, was alone entitled to the deceased's estate. In this the older Mburugu Gakiira was wrong in law, and so is his son, Lawrence Guantai in equating himself to a member of a polygamous house as is envisaged by section 40 of the Law of the Law of Succession Act. Daughters and sons, unless one renounces his/ her inheritance are equally entitled to inherit their parents' estate. It is immaterial that daughters are married. An outsider, a distant cousin for instance would have to establish his stake in the absence of any other immediate relative within the degrees of consanguinity as is envisaged by section 39 of the Law of Succession Act.

In this Cause the daughters of the late Kirika Marura are happily married. They themselves are not claiming any part of the inheritance of their father's net intestate estate. They have instead proposed that the net intestate estate be distributed equally among their father's grandchildren that is to say their own children and that the Objector be treated as an additional unit of those grandchildren and obtain an equal share. With respect, I would agree with that proposition. It is in accord with Section 35(5) of the Act and also recognizes their cousin's interest now of his son, Lawrence Guantai.

Being therefore of that mind, I propose to distribute the residue of the deceased's net intestate estate, that is to say, land parcel title Number ABOGETA/U. KIRINGA/202 comprising 6.3. hectares or fifteen

decimal six four (15.64) acres as follows:

1. Gilbert Gitonga son of Evangeline Karuru 2.235 acres
2. Jennifer Ruguru Mukindia 2.235 acres
3. Beatrice Wanja 2.235 acres
4. Gilbert Kinyua Mwarania of Jennifer Mbuthu  
(now deceased) 2.235 acres
5. Stanley Mwobebia M'Mwari s/o Elizabeth Muthoni  
(now deceased) 2.235 acres
6. Beatrice Kooru M'Mugambi 2.235 acres
7. Lawrence Guantai Mburugu son of  
M'Mburugu Gakiira 2.235 acres

TOTAL 15,645 acres.

The beneficiaries will contribute to the costs of sub-division, but each party shall bear the cost of stamp duty and issue of individual title.

There shall be orders accordingly

Dated Delivered and signed at Meru this 3<sup>rd</sup> day of July 2009

**M. ;J. ANYARA EMUKULE**

**JUDGE.**