In re Estate of Rokoya Muuna M'Muuna alias Rukuya Muna (Deceased) (Succession Cause E043 of 2021) [2024] KEMC 93 (KLR) (31 May 2024) (Judgment)

Neutral citation: [2024] KEMC 93 (KLR)

REPUBLIC OF KENYA

IN THE GITHONGO LAW COURTS

SUCCESSION CAUSE E043 OF 2021

AT SITATI, SPM

MAY 31, 2024

IN THE MATTER OF THE ESTATE OF ROKOYA MUUNA M'MUUNA ALIAS RUKUYA MUNA (DECEASED)

IN THE MATTER OF

CATHERINE KANUGU RUKOYA ..... PETITIONER

JUDGMENT

1. By summons for confirmation of grant dated 16th October, 2023 supported by an affidavit of similar date, the Petitioner herein proposed the equal sharing as the mode of distribution for the only estate property namely Abothuguchi/Mariene/153 amongst the following 4 beneficiaries:

    i. Charles Kijogi

    ii. Harriet Kathure Kinyua

    iii. Edith Kagundu Kiogora

    iv. Catherine Kanugu Rukoya

2. Mr. Kirimi Munene Advocate informed the court that he had received instructions to file a protest against the Summons for Confirmation. On 2 different dates i.e. 29/02/2024 and 28/03/2024 the Court ordered and directed the intended objector namely Lawrence Mutuma but as of this date of the Judgement no objection or protest had bene lodged. In the result, the court was called upon to determine the Summons for Confirmation as filed.

Determination

3. The deceased died intestate. As per the Chief's Letter of Introduction dated 23rd July, 2023 the deceased was survived by:

    1. Elizabeth Gaiti (deceased) – spouse

2. Evangeline Kithira (deceased) – daughter – survived by 6 children.

3. Harriet Kathure Kinyua – living daughter.

4. Robert Kiogora (deceased) –son – survived by 9 members of his family including his widow Edith Kagundu Kiogora.

5. Judah Muwiri (deceased)- son- died childless

6. Catherine Kanugu Rukuya – living daughter and Administratix of the estate.

The further evidence was that the deceased had only one asset namely land reference Mariene/ Upper Abothuguchi/153 measuring 0.38HA

4. In the result, the court shall be guided by section 38 of the *Law of Succession Act* which provides that:

38. Where intestate has left a surviving child or children but no spouse

> Where an intestate has left a surviving child or children but no spouse, the net intestate estate shall, subject to the provisions of sections 41 and 42, devolve upon the surviving child, if there be only one, or shall be equally divided among the surviving children.

5. That being so, the court shall and hereby orders the equal sharing of the only estate property amongst the surviving children of the deceased as follows:The Administrator of the share of Evangeline Kithira who shall hold for herself and in trust for the children of the deceased Evangeline Kithira.Harriet Kathure Kinyua.The Administrator of the share of Robert Kiogora who shall hold for herself and in trust for the children of the deceased Robert Kiogora.Catherine Rukuya.

6. A certificate of the confirmation of Grant is issued in terms of the above-decided sharing ratio. Right of appeal is 30 days.

DATED, READ AND SIGNED AT GITHONGO THIS 31ST DAY OF MAY, 2024

HON. T.A. SITATI

SENIOR PRINCIPAL MAGISTRATE

GITHONGO LAW COURTS

Present

Ronny and Joan Court Assistants

Petitioner and Respondents absent.