



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT MERU**

**SUCCESSION CAUSE NO. 625 OF 2013**

**IN THE MATTER OF THE ESTATE OF M'MUGWIKI IBUTU (DECEASED)**

**GLORY RUUNGO M'MUGWIKI.....PETITIONER**

**VERSUS**

**MAURICE KINYUA MUGWIKI.....1<sup>ST</sup> OBJECTOR/PROTESTOR**

**FRANCIS GITUMA MUGWIKI.....2<sup>ND</sup> OBJECTOR/PROTESTOR**

**RULING**

1. **M'Mugwika Ibutu** (“the deceased”) died on 28<sup>th</sup> January, 2012. From the letter of introduction, he left behind 15 survivors who belonged to 2 houses as follows: -

**1<sup>st</sup> House**

- a) **Glory Ruungo M'Mugwika - Widow**
- b) **Jeniffer Gacheri Murira - Daughter**
- c) **Doris Karamana Mugwika - Daughter**
- d) **Francis Gituma Mugwika - Son**
- e) **Ann Mwari M'Mugwika - Daughter**
- e) **Grace Karwitha M'Mugwika - Daughter**
- g) **Purity Kathure Ntumbari - Daughter**
- h) **Mwenda Simion Mugwika - Son**
- i) **Elizabeth Kuri Mugwika - Daughter**
- j) **Florence Mwendwa - Daughter**
- k) **Doris Kathambi Mutuma - Daughter**

**2<sup>nd</sup> House**

- a) **Maurice Kinyua Mugwika - Son**
- b) **Martha Kagendo Mugwika - Daughter**
- c) **Festus Muthethia Mugwika - Son**
- d) **Muriithi Edward Mugwika - Son**

2. The deceased left the following assets forming his estate: -

- a) **L.R ADJ SECTION KIMACHIA No. 917**
- b) **L.R ADJ SECTION RUIRI RWARERA No. 442**
- c) **MUTUATI MKT PLOT No. 498**
- d) **MUTUATI MKT PLOT No. 4015**
- e) **MUTUATI MKT PLOT No 1783**
- f) **MAUA MKT PLOT No 2955**
- g) **LR No. NYAKI/MUNITHU/671**

3. On 13<sup>th</sup> November 2013, **Glory Ruungo M'mugwika** ("the petitioner"), applied for letters of administration intestate and she was appointed the administrator on 19<sup>th</sup> February, 2014. On 14<sup>th</sup> October, 2014, she applied for confirmation of grant and gave specific proposals on distribution. All the beneficiaries signed the consent to distribution except Muriithi Edward Mugwika.

4. That proposal was as follows: -

**A. MWATHI/MWATHI 11A/4015**

Maurice Kinyua Mugwika -5points

Francis Gituma Mugwika

Mwenda Simion Mugwika

Maurice Kinyua Mugwika -7.5 points jointly

Festus Mutethia Mugwika

Murithi Edward Mugwika

Jeniffer Gaceri Murira

Martha Kagendo Mugwika

Grace Karwitha M'Mugwika -7.5 points jointly

Elizabeth Kuri Mugwika

Doris Kathambi Mutuma

**B. MWATHI/MUTUATI II A/1783**

Francis Gituma Mugwika

Mwenda Simeon Mugwika - ½ share jointly

Maurice Kinyua Mugwika

Festus Mutethia Mugwika - ½ share jointly

Murithi Edward Mugwika

**C. MWATHI/MUTUATI IIA/8050**

Simion Mwenda Mugwika

Francis Gituma Mugwika - 0.4 jointly

Maurice Kinyua Mugwika

Festus Mutethia Mugwika - 0.4 jointly

Murithi Edward Mugwika

**D. PLOT NO. MAUA/2955**

Francis Gituma Mugwika - ½ share

Festus Mutethia Mugwika - ½ share

**E. RUIRI/RWARERA/442**

Maurice Kinyua Mugwika - 6 ½ acres

Festus Muthethia Mugwika - 6 ½ acres

Jennifer Gaceri Murira

Martha Kagendo Mugwika

Grace Karwitha M'Mugwika

Elizabeth Kuri Mugwika 3.25 acres jointly

Ann Mwari Mugwika

Florence Mwendwa Mugwika

Doris Karamana Mugwika

Purity Kathure Ntumbari 3.25 acres jointly

Gloria Ruungo M'Mugwika - Balance

**F. PLOT NO. NAATHU/115**

Maurice Kinyua Mugwika

Festus Muthethia Mugwika ½ share jointly

Murithi Edward Mugwika

Francis Gituma Mugwika

Mwenda Simon Mugwika ½ share jointly

**G. NYAKI/ MUNITHU/671**

Maurice Kinyua Mugwika

Festus Muthethia Mugwika ½ share

Murithi Edward Mugwika

Francis Gituma Mugwika ½ share jointly

Mwenda Simon Mugwika

**H. PLOT NO KIMACHIA/728**

Glory Ruungo M'Mugwika

**I. KIMACHIA/917**

Murithi Edward Mugwika - 6 acres

Doris Kathambi Mutuma - 1 acre

Simon Mwenda Mugwika

Francis Gituma Mugwika

Maurice Kinyua Mugwika Balance jointly

Festus Mutethia Mugwika

**J. BANK ACCOUNTS**

i) Barclays Bank of Kenya Maua Branch A/C No. 0441036043 - Glory Ruungo M'Mugwika

ii) Equity Bank Meru Branch A/C No. 0400191320711 Glory Ruungo M'Mugwika

4. On 16<sup>th</sup> December 2014, Maurice Kinyua Mugwika (1<sup>st</sup> Objector) and Francis Gituma Mugwika (2<sup>nd</sup> Objector) filed a protest to the scheme of distribution. They contended that the petitioner intended to disinherit the dependents of the deceased.

5. The protest was opposed vide a replying affidavit sworn by the petitioner on 1<sup>st</sup> November 2016. She admitted having sworn the affidavit in support of confirmation of the grant. However, that she was illiterate and that the said affidavit was never made clear to her as the 1<sup>st</sup> Objector was behind the contents of the affidavit.

6. After the 1<sup>st</sup> objector had testified and been cross-examined, the parties asked the court to determine the protest on the basis of the affidavits on record and submissions of learned Counsel. The objectors submitted that there was no dispute that there was a family meeting that took place on 1<sup>st</sup> January 2004 where the deceased expressed how he intended that his properties be distributed.

7. They were in agreement with the distribution as per the minutes of that meeting save that they invited the court to rule that, the reference to "parents" in respect of the properties known as NAATHU/115, NYAKI/MUNITHU/671, RUIRI/RWARERA/442 and NYAKI/CHUGU/1108 referred to the petitioner, the deceased and the 2<sup>nd</sup> wife of the deceased.

8. On the other hand, it was submitted on behalf of the petitioner that the reference to "parents" in the minutes of 1<sup>st</sup> January, 2004 referred to the petitioner and the deceased only since they were the only ones present at that meeting.

9 On 6<sup>th</sup> February, 2018, the parties framed the issues for determination as:-

a) **Did the deceased have two wives"**

b) **Does the reference to the term parents in the minutes of the meeting dated 1<sup>st</sup> January, 2004 refer to the deceased, the petitioner and the mother of the protestor or not"**

c) **How should the properties, NAATHU/115, NYAKI/ MUNITHU/671,RUIRI/RWARERA/442,NYAKI/CHUGU/1108 be distributed"**

10. From the record, the deceased had 14 children from two women as follows: -

a) **Rosemary Karimi** (deceased), had four children namely, Maurice Kinyua Mugwika, Martha Kagendo Mugwika, Festus Muthethia Mugwika and Muriithi Edward Mugwika.

b) **Glory Ruungo M'Mugwika** had ten children namely, Jeniffer Gacheri Murira, Doris Karamana Mugwika, Francis Gituma Mugwika, Ann Mwari M'Mugwika, Grace Karwitha M'Mugwika, Purity Kathure Ntumbari, Mwenda Simion Mugwika, Elizabeth Kuri Mugwika, Florence Mwendwa and Doris Kathambi Mutuma.

11. No one told the court what happened to Rosemary Karimi. There was no evidence that was called to explain how the deceased ended having four children with her. It was not clear whether they were married then divorced or separated or otherwise

12. It was in the submission of the petitioner that she contended that the deceased only had children with Rosemary Karimi and that is all. She never explained whether the said Rosemary Karimi was only having children with the deceased while living elsewhere as a single woman then the children were brought to her to look after them or not.

13. The question is, could the deceased have been siring children up to four with the said Rosemary Karimi and she was not his wife" At what ages were the four children of Rosemary Karimi brought to the petitioner to look after them" One thing is clear, that Rosemary Karimi begot 4 children with the deceased whom the deceased took and looked after until his demise. In the circumstances, could **Rosemary Karimi** therefore be considered to be a parent"

14. The **Blacks Law Dictionary, 9<sup>th</sup> Ed. Buttherworths**, defines a Parent as;

*“The lawful father or mother of someone..... The term commonly includes 1) either the natural father or the natural mother of the child 2) either the adoptive father or the adoptive mother of the child 3) a child’s putative blood parent who has expressly acknowledged paternity and 4) an individual or agency whose status as guardian has been established by a judicial decree”.*

15. From the foregoing, Rosemary Karimi having given birth to four children with the deceased constituted “the parents” of Maurice Kinyua Mugwika, Martha Kagendo Mugwika, Festus Muthethia Mugwika and Muriithi Edward Mugwika. She was therefore as much a parent as were the petitioner and the deceased.

16. Flowing from the foregoing, did the term “parents’ used in the meeting of 1<sup>st</sup> January, 2004 refer to the deceased and both Rosemary Karimi and Glory Ruungo or the deceased and the petitioner only"

17. The petitioner stated that, the term “parents” referred to her and the deceased only. That since she had survived the deceased, those properties should go to her only. It should be recalled that neither her nor Grace Karwitha who took the minutes were cross-examined on their statements.

18. More important, Grace Karwitha who took the minutes did not define the term “parents” in the minutes of the meeting of 1<sup>st</sup> January, 2004. Further, in her statement dated 8<sup>th</sup> May, 2004, she did not explain who the term “parents” in the minutes of 1<sup>st</sup> January, 2004 referred to.

19. Such evidence lacking, the court is left to make inferences and deductions from the conduct of the parties, the deceased in particular as can be ascertained from the record. The testimony of the 1<sup>st</sup> objector was that he was born and brought up on **NAATHU/115**. That it is a fully developed property with a hotel and a butchery. That he has occupied the hotel since time immemorial and had been operating the same with the deceased during his lifetime. That at that time, the petitioner was occupying and operating the butchery. That it is there the deceased left before he died.

20. That piece of evidence was neither denied nor challenged. If the deceased’s intention was that **NAATHU/115** was exclusively meant for him and the petitioner alone, why was the 1<sup>st</sup> objector in occupation and operating the hotel thereon 8 years after the 1<sup>st</sup> January, 2004 meeting"

21. The fact of leaving the 1<sup>st</sup> objector to continue operating the hotel on one portion and the petitioner operate the butchery on the other portion was an indication of who the “parents” may have meant in the minutes of 1<sup>st</sup> January, 2004. The 1<sup>st</sup> objector being a son of the other woman, he represented the interests of that other parent. To my mind, that would be the most logical and just interpretation of the term “parents” as used in the minutes of the 1<sup>st</sup> January, 2004 meeting.

22. The other issue is the first proposal that was made by the petitioner in October, 2014. That was only 2 years after the deceased had passed on. The petitioner clearly showed the intention of taking into consideration the fact of the deceased having 2 houses. The proposal contained in the application for confirmation is in tandem with the foregoing interpretation She only claimed that she was misled by the 1<sup>st</sup> objector and that that is why she ditched her previous advocate.

23. I note that the affidavit supporting the first proposal was properly sworn by the petitioner on 9<sup>th</sup> October, 2014. When the 1<sup>st</sup> objector testified on 6<sup>th</sup> February, 2018, he was never questioned on the allegation that he is the one who had misled the petitioner in her first proposal. That was neither suggested nor put to him. Further, the petitioner’s subsequent affidavit was not served upon Mr. Gatari Ringera, Advocate for him to confirm and deny the allegation that he had misled her into signing the first affidavit.

24. This court loathes the tendency where litigants seek to hide behind their purported ignorance and blame advocates when they have made wrong decisions or error of judgment. An allegation against an advocate by his erstwhile client is a serious one. It has serious professional consequences. It must be brought to the attention of the “erring” advocate for him either to admit or deny

before such a client can be allowed to rely on it to the prejudice of the opposite party.

25. To my mind therefore, I reject the contention that the petitioner did not know what she was signing when she gave her original distribution. She took care of not only herself but also all the other beneficiaries of the deceased. That is why when she tried to change it, even her own son, the 2<sup>nd</sup> objector objected to it.

26. I have looked at the original proposed distribution, the same is in accordance with the family meeting held on 1<sup>st</sup> January, 2004. I will however, distribute **Nyaki/Chugu/1108** that was subsequently discovered to the petitioner.

27. Accordingly, the grant is confirmed in terms of para 4 hereof save that **Nyaki/Chugu/1108** is distributed to the petitioner, Glory Muungo M'Mugwika.

28. I will not make any orders as to costs this being a family matter.

**SIGNED** at Meru me:

**A. MABEYA**

**JUDGE**

**DATED** and **DELIVERED** at Meru this 6<sup>th</sup> day of December, 2018.

**F.K. GIKONYO**

**JUDGE**



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