



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MERU**

**SUCCESSION CAUSE NO. 289 OF 2012**

**In the Matter of the Estate of Jacob Gichunge Muchiri-Deceased**

**REGINA MUKIRI GICHUNGE.....1<sup>ST</sup> PETITIONER**

**FRIDAH KANINI GICHUNGE.....2<sup>ND</sup> PETITIONER**

**-VERSUS-**

**DAMARIS KINOTI.....APPLICANT**

**SAMWEL MUTWIRI.....RESPONDENT**

**SUSAN NKIROT, HELLEN KARIMI NJURE, ANN KARUKI,**

**PURITY KARAMBU & MARY KANINI.....INTERSTED PARTIES**

**RULING**

**Distribution of intestate property and accounts**

[1] The court made the following orders in its judgment delivered on 2<sup>nd</sup> July 2019: -

- i. That the intestate as well as the bank accounts mentioned in the will but were not testamentary transmitted shall be distributed by the court after parties have filed submissions on distribution thereto. The certificate of confirmation of grant shall be accordingly amended.
- ii. That the petitioners shall in 30 days of today provide and file a full and accurate account as at the date of death of the deceased, how much was disbursed and to which beneficiaries and when. They shall also file all transfer and or bank documents to support all such transactions within 30 days of today.
- iii. In light of the position taken by the court on the foregoing issues, the quest for reasonable provision shall be decided during distribution of the intestate estate. Parties shall address this issue in their submissions.

[2] To distribute the intestate estate, the court was acutely aware the need for full and accurate details of all the intestate estate. Similarly, the court was alive to the centrality of full and accurate accounts in respect of all intestate estate. The court also was clear that in light of the full and accurate accounts and details of how intestate estate was dealt with by the petitioners, it would consider the quest for reasonable provision. Hence, court ordered provision of the details of the intestate property as well as full and accurate estate account in respect of the intestate estate assets. The petitioner has filed an affidavit and a further affidavit dated 20<sup>th</sup> September, 2019 and 12<sup>th</sup> March, 2020 together with documents annexed thereto. I have perused the said filings by the petitioner as well as affidavits filed by the other parties. But, due to the ultimate decision that will become clear soon, I will not delve into the substantive issues argued; I will state just enough to support the direction the court will take.

[3] The affidavit by ANN KARUKI has raised quite substantive omissions in the petitioner's affidavits. Of specific importance is that the accounts, statements and documents provided do not cover all dealings with the intestate properties of the deceased. For instance, it does not provide a schematic or visual graphic display of paper trail of funds in all bank accounts in issue from the date the deceased died up to the time of filing the accounts. Such display of accounts should be clear to the court. Again, details of all transactions relating to the petrol station, soda business, cigarette business and shop business including change of names thereto are lacking. These issues are critical in the final distribution of the intestate estate as well as determination of the question of reasonable provision herein.

[4] In light thereof, proper accounts of all dealings and transactions in respect of the intestate accounts especially the bank accounts should be carried out by a professional person giving details of all transactions thereto and supported by appropriate accountable documentation. The person or firm of professional to carry out this assignment shall be agreed among the parties within 30 days hereof, which failing, the court shall appoint the person or firm of professionals to carry out the assignment within 30 days of expiry of the time first allowed hereinabove. The said professional accounts shall be filed in court within 30 days of the appointment. The court will also ascertain all bank accounts of the estate for purposes of accounts hereto ordered. I therefore, remit the file back to Meru for the above actions to be taken. The judge who will preside over the matter shall also determine distribution of intestate estate. It is so ordered.

**Dated and signed at Narok this 14<sup>th</sup> day of November 2020**

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**F. GIKONYO**

**JUDGE**

**Dated, signed and delivered at Meru this 16<sup>th</sup> day of December 2020**

.....

**T. W. CHERERE**

**JUDGE**



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