



REPUBLIC OF KENYA



**KENYA LAW**  
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**Maingi v Hearts of Gold Self Help Group (Succession Cause  
147B of 2015) [2022] KEHC 11498 (KLR) (31 May 2022) (Judgment)**

Neutral citation: [2022] KEHC 11498 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KITUI  
SUCCESSION CAUSE 147B OF 2015**

**RK LIMO, J**

**MAY 31, 2022**

**BETWEEN**

**TERESIA KAVILI MAINGI ..... PETITIONER**

**AND**

**HEARTS OF GOLD SELF HELP GROUP ..... PROTESTOR**

**JUDGMENT**

1. This cause relates to the estate of the late Maingi Maliti Ndumba (deceased) who died instate on the 2<sup>nd</sup> November 2014. The deceased was survived by the following: -
  - i. Teresia Kavili Maingi (deceased)
  - ii. Mutua Maingi
  - iii. Nzeli Maingi
  - iv. Musee Maingi
  - v. Kamanza Maingi
  - vi. Maliti Maingi
  - vii. Mwende Maingi
  - viii. Syongu Maingi
  - ix. Damaris Maingi
  - x. Stella Maingi
  - xi. Mwenzwa Maingi



- xii. Kavete Maingi
- xiii. Kithuku Maingi
- xiv. Kathini Maingi
- xv. Nzimbi Maingi
- xvi. Mutethya Maingi
- xvii. Makau Maingi
- xviii. Lydia Maingi
- xix. Mercy Maingi
- xx. Savali Maingi

2. The assets comprising the estate in this cause are listed as follows: -

- a) Kyangwithya/Kaveta/930
- b) Kyangwithya/Kaveta/493
- c) Kyangwithya/Kaveta/479
- d) Kyangwithya/Kaveta/999
- e) Plot No. 4096/R241 Kaango Estate
- f) Plot No. 323 Mosquito Estate
- g) Plot No. 77 Kalundu Market
- h) Plot No. 174 Mutomo Market

3. The Petitioner/administratrix Teresia Kavili Ndumba, vide summons for confirmation of grant dated 22.1.2021 moved this court for confirmation of grant issued to her on 29th January 2016. This court was told on 28.1.2021 the family of the deceased agreed on the mode of distribution save for one property namely Kyangwithya/Kaveta/493 which was being claimed by protestors herein named Hearts of Gold Self Help Group. This court then based on the consent of all the beneficiaries confirmed the grant and distributed the assets as per the consent filed at the same time this court fixed the matter for hearing on the protest in respect to the cited asset which is the subject of this judgement.

#### **The administratrix/Petitioner's case**

4. The petitioner concedes that the deceased subdivided his parcel Kyangwithya/Kaveta/493 with an intention to sell a portion to the protestor but according to her the sale did not go through because at the time deceased died the procedures of sale had not been completed and the total consideration had not been paid.

5. Michal Maingi (PW1) a grandson to the deceased testified that the deceased family was aware of the sale and that the protestor had paid Kshs. 500,00 leaving a balance of Kshs. 200,000.

He testified that he placed the caution on the parcel to take care of the interest of deceased's family. He averred that the family offered to refund the amount paid but the group declined the offer. He faulted



the sale agreement relied on by the protestor on the ground that the subject of the sale agreement is not indicated.

6. Musenya Peter (PW2) a daughter in law to the deceased also testified and echoed the sentiments from PW1. She stated that they had agreed as a family to refund the deposit paid by the protestors so that the children of the deceased can inherit the disputed portion.

7. Mukeki Juma (PW3) on her part raised an issue in the manner in which the estate was distributed generally but this court advised her to file a separate protest because the protest filed was in respect to Hearts of Gold Self Help Group.

In her submissions filed through Counsel, the administratrix avers that the deceased had gifted a number of parcels inter vivos to the 3<sup>rd</sup> wife Kavata Maingi.

8. It is her contention that the 1st and 2nd house be allowed to share what is remaining in the estate and the 3rd house be allowed to retain what was given by the deceased prior to his demise which the petitioner claims are far much larger than what the other two houses got in the distribution.

9. On the question of the protest herein, the petitioner submits that the sale agreement exhibited is fraud because what the deceased was selling at Kshs. 700,000 is not described or identified. She contends that because the sale fell through, owing to the demise of the deceased the best option for the protestors was to accept the offer made by the family to refund the amount deposited.

#### **Protestor's Case**

10. Kavata Maingi (DW1) on her part testified that she was the 2nd wife of the deceased. She told this court that she was protesting because she was not informed of what she was going to be given.

11. Jimmy Kalua Kimanzi (DW2) the Area Chief summoned by this court to shed light on the dispute he testified that he was aware that Kavata Maingi (DW1) was gifted parcel No. Kyangwithya/Kaveta/424 which was later subdivided.

He testified that he was also aware that the deceased had sold a portion of his land to the protestors (Self Help Group) herein and that the deceased and Self Help Group members visited his office with the deceased for the purpose of sale agreement.

12. Joyce Kavindu Mule (DW3) on her part informed the court that she was the chairperson of the Self-Help Group. She stated that the group purchased a portion of Kyangwithya/Kaveta/493 from the deceased, specifically, that they purchased 0.24ha (although the size was not indicated in the Sale Agreement) at an agreed price of Kshs 700,000/-. She stated that, the group paid Kshs 500,000/- on 2<sup>nd</sup> October 2014 leaving a balance of Kshs 200,000/- which was to be paid on or before 2<sup>nd</sup> November 2014 but the deceased died before the balance of the purchase price was paid. She stated that the group was ready to pay the balance and that they were not interested in a refund of the deposit. She stated that the deceased was sick at the time of the agreement and that the agreement was witnessed by Katavi Maingi and Michael Kithuku Maingi.

13. In their written submissions through Counsel, the protestors have contended that there was a sale agreement which was not disputed. They aver that they bought a portion of Kyangwithya/Kaveta/493 and that they paid Kshs. 500,000 having a balance of Kshs. 200,000 which according to them was to be paid on 2.1.2014 but unfortunately the deceased passed on before her was paid.

14. The protestors submit that the intention of the deceased was to complete the sale to the protestors and transfer the parcel to them. They aver that the administratrix should carry on and complete the



transaction adding that she has a binding obligation to fulfil what the deceased could have done. They have relied on the decision of the *Estate of Julius Ndubi Joran* [2018] eKLR.

15. According to the protestors there was a binding sale agreement between the deceased and the protestors and that the administratrix cannot renege from the same. They submit that she was not privy to the contract and the only duty bestowed upon her by law is to complete the sale transaction and transfer the portion to the protestors.

### **Determination**

16. This court has considered the protests herein and responses made. From the onset Kavata Maingi did not file a formal protest. Someone appears to have made her sign a letter addressed to this court dated 4.4.2022 wherein she complains that she has been coming to court without any information.
17. This court saw that she was quite aged when she turned up in court to testify and confirmed that it could be time that she was over 100 years old. This court has no reason to doubt her.
18. She asked this court to grant her a share of the estate and when asked to state the properties given to her by her late husband (the deceased herein) she could not recall. She further conceded that she was married to another man named Mbuvi with whom she got children. She also conceded that she was staying in a parcel of land given to her by the deceased.
19. This court due to scanty information placed before me, summoned the Area Chief to shade light on the issues raised by the widow (DW1). The Senior Chief Jemmy Kalua Kimanzi (DW3) came and testified that the deceased herein had 3 wives namely;
  - i. Teresia Kavili Maingi (administratrix)
  - ii. Teresia Katavi (1<sup>st</sup> Protestor)
  - iii. Kavata Maingi

The Area Chief testified that the deceased prior to his demise gave Kavata Maingi (2<sup>nd</sup> wife-1st protestor herein) a portion of land and had it registered in her name prior to his demise. She further testified that the said 1<sup>st</sup> protestor was initially married to another man before she married the deceased. She testified that she was given 3 parcels of land as compared to other widows who were given 2 parcels each.

She further added that the 1st protestor had only one child to the deceased who was now deceased and according to the Area Chief, each house should be allowed to retain what they possessed and occupied.

20. This court has considered the protest lodged by the 1st protestor (Kavata Maingi) and one of the widows to the deceased and find that the same is lacking in merit. She appeared to this court as someone who was being pushed by someone behind the scenes to lay claim on the estate of the deceased.

This court finds that the parcels given to her by the deceased during his lifetime is sufficient to cater for her interest. The provisions of Section 42 of the Law of Succession provides that gifts inter vivos are taken into account during distribution of the assets forming the estate of a deceased person. The first protestor has not proved that she was disadvantaged by the shares given to her.

She herself concedes that the children she had with her former husband (Mbuvi) have no claim in the estate of the deceased herein as they were not dependants to the deceased herein. She should therefore, be content or satisfied with what her late husband gifted her as per the replying affidavit of Winfred Musanya Peter sworn on 14.06.2021. The contents of which are uncontroverted.



21. In respect to the 2<sup>nd</sup> protestors, the Hearts of Gold Self Help Group, this court finds that their claim over the estate is based on a sale agreement dated 2<sup>nd</sup> October 2014. This court has looked at that agreement keenly and finds that the agreement lacks in clarity and specificity. No one can really know what the deposit was for. The agreement just contains the particulars of deposit and balance of 200,000 which was to be paid on or before 2<sup>nd</sup> November, 2014. There is of course a mention of Kyangwithya/Kaveta/493 but it is not clear if the entire parcel was the subject of consideration or whether part of it was the subject. If the protestors are to be believed that Kshs. 700,000 was for only a portion, the question is why was the portion not described half, a quarter or whatever portion? It is not clear at all.
22. There is also a second issue which though was not addressed by parties herein is important because it touches on the jurisdiction of this court as a probate court. In my view, the claim on the estate in this matter by protestors is based on a chose in action. In fact, the protestors have rightly put it that the petitioner was not privy to the sale agreement and cannot have a role in it other than to effect a transfer. The question posed is which for a is best suited forum to adjudicate over a claim based on a chose in action? In my view, because the protestors are seeking for specific performance from the administratrix to do that which they expected the deceased to do, their claim should have been filed in Environment and Land Court (ELC) where they can and seek the orders against the petitioner as the administratrix of the estate of the late Maingi Maliti Ndumba.
23. The other issue which was also not clearly brought out is whether the suit property is an agricultural land within the meaning of Section 2 of *Land Control Act* and if so whether the parties to the sale agreement ever complied with Section 6 of *Land Control Act*. Those issues were not properly brought out and as I have observed above this court is not well placed in terms of jurisdiction to entertain the issues even if this court was seized with the requisite jurisdiction, the claim by the protestors herein certainly could not have seen the light of day because the basis of the claim in my view is shaky and unsustainable.

In the end, this court finds that the protestors' claim is incompetent and bad in law. The same is struck out but I will not make any orders as to costs.

**DATED, SIGNED AND DELIVERED AT KITUI THIS 31ST DAY OF MAY, 2022.**

**HON. JUSTICE R. K. LIMO**

**JUDGE**

