



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

(CORAM: CHERERE-J)

SUCCESSION CAUSE NO. 94B OF 2003

IN THE MATTER OF THE ESTATE OF M'MBIJIWE M'MPWI alias MBIJIWE MPWI (Deceased)

BETWEEN

MONICA M'MBIJIWE....PETITIONER/ APPLICANT

AND

EVANGELINE KAMIRI.....RESPONDENT

RULING

BACKGROUND:

1. On 28th April, 2016, the deceased's estate comprised in LR. NO. NTIMA/NTARIBA/527 was distributed as follows:

- a. Stella Kajuju and Lucy Mwendwa - 0.12 Ha equally
- b. Margaret Kananau and Jasho Muriungi - 0.3 Ha equally
- c. Gitonga Thomas - 0.2 Ha

2. On 30th March, 2017, the certificate of confirmation of grant dated 28th April, 2016 was rectified as follows:

- a. Stella Kajuju and Lucy Mwendwa - 0.12 Ha equally
- b. Margaret Kananu and Jasho Muriungi - 0.63 Ha equally
- c. Gitonga Thomas - 0.2 Ha

3. On 31st January, 2018, The Certificate of Confirmation of Grant dated the 30th March, 2017 was rectified as follows:

- a. Stella Kajuju and Lucy Mwendwa - 0.12 Ha equally
- b. Margaret Kananu and Jason Muriungi - 0.63 Ha equally
- c. Gitonga Thomas - 0.2 Ha
- c. Josphat Mugambi - 0.81 Ha

4. On the same date, the court ordered that the 0.81 Ha for Josphat Mugambi (deceased) be distributed to his wife Evangeline Kamiri to hold for life for the benefit of Kelvin Muriuki and Poly Karimi Mugambi in equal shares.

5. By summons dated 25th August, 2020 and filed on 01st September, 2020, MONICA M'MBIJIWE (**Petitioner/Applicant**) seeks an order that the court be pleased to rectify the Rectified Certificate of Confirmation of Grant issued on 31st January, 2018 and order that the share measuring 0.18 Ha from deceased's land parcel LR. NO. NTIMA/NTARIBA/527 be shared equally between her and **EVANGELINE KAMIRI (Respondent)**.

6. The application is supported by the Applicant's affidavit sworn on 25th August, 2020 in which she avers that she is the deceased's widow and further that there was a consensus in the family that her deceased son Josphat Mugambi was given a bigger share so as to maintain her but the Respondent has reneged on the consensus thereby disinheriting her.

7. The application is opposed by way of a replying affidavit sworn by **EVANGELINE KAMIRI (Respondent)** on 05th October, 2020. The Respondent avers that the distribution was made according to the Applicant's wishes and that her share is bigger for the reason that it is on a valley and is not easily accessible. Avers that she has been kind to the Applicant who has now become hostile to her. She urges the court to redistribute the estate afresh.

8. In her supplementary affidavit, the Applicant denies that there is a valley on Respondent's portion. She contends that she is willing to have the estate redistributed on condition that the Respondent pays the costs thereof.

Submissions by the parties Petitioner/Applicant's submissions

9. Petitioner/Applicant holds the view that her application is tenable since she is entitled to a share of her deceased husband's estate. In support thereof, reliance was placed on **Janet Njagi M'nchebere v Julius Kioe Mwenda [2016] eKLR** where Gikonyo J rendered himself thus:

".....the widow is entitled to a share in the estate of the deceased; at the minimum, life interest, although I think we should begin to recognize the constitutional rights of widows to the property of their marriage."

Respondent's submissions

10. The Respondent urged the court to order that the Applicant holds a life interest in the whole of the estate and on its termination the estate be distributed in equal shares to the beneficiaries. In support thereof, reliance was placed on **Esther Karoki M'magiri v Glory Kananu Magiri & Another [2016] eKLR** where the Court of

Appeal held thus:

".....Moreover the law provides that the estate of a single household such as this one, should vest upon the surviving spouse for life and upon the determination of her life interests, the residue be shared equally among the six children."

Analysis and determination

11. I have considered the application in the light of the affidavits on record and submissions by both parties.

12. The law on distribution where the deceased is survived by a spouse and child or children is to be found in Section 35 of the **Law of Succession Act (the Act)** which provides that:

1. Subject to the provisions of section 40, where an intestate has left one surviving spouse and a child or children, the surviving spouse shall be entitled to—

a. the personal and household effects of the deceased absolutely;

and

b. a life interest in the whole residue of the net intestate estate

(Emphasis added)

13. The record herein demonstrates that the distribution of deceased's estate as proposed by the Petitioner herself prejudices her and denies her the legal right of having a life interest in her deceased husband's estate.

14. Further to the foregoing, the distribution to the deceased's children was no doubt not in equal shares. It is apparent that the Respondent's husband was apportioned a bigger share and the contention that this was for the purpose of maintaining the Petitioner is probable. The accusations and counter-accusations between the Petitioner and the Respondent however reveal that the Petitioner is safer under the protection of the law under Section 35 of **the Act** than being at the mercy of any of her children.

15. The law provides that the estate of a deceased that is comprised of a single household should vest upon the surviving spouse for life.

16. In the end, the summons dated 25th August, 2020 and filed on 1st September, 2020 is allowed in the following terms:

1. The Rectified Certificate of Confirmation of Grant issued on 31st January, 2018 is hereby revoked

2. Land Registrar, Meru County is hereby directed to cancel all certificates of title issued subsequent to the sub-division of deceased's land LR. NO. NTIMA/NTARIBA/527 and revert the title to the name of M'MBIJIWE M'MPWI alias MBIJIWE MPWI (DECEASED) notwithstanding that the resultant title deeds may not have been surrendered.

3. Pending the final orders on distribution, the parties herein and all the other beneficiaries are encouraged to agree on the mode of distribution that is just and fair to all.

Dated at Meru this 11th DAY OF February, 2021

T. W. CHERERE

JUDGE

Court Assistant - Morris Kinoti

For Applicant - Mr. Muthomi for John Muthomi & Co. Advocates For Respondent - N/A for Gatari Ringera & Co. Advocates