



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

SUCCESSION CASE NO. 32 A OF 2014

MARGARET KABORI M'IKIUGU.....PETITIONER

VERSUS

PRISCILLA KANYAM M'IKIUGU.....RESPONDENT/PROTESTER

RULING

1. M'Ikiugu M'Mugwika died on 30th December 2012 at Nanyuki College Hospital aged 78 years. From the chiefs letter dated 23rd September 2013. The chief of Ntugi Location indicated that the deceased had 6 wives and had been survived by 1st, 2nd, 4th, 5th and 6th wives. The deceased was also survived b 12 sons and 17 daughters and one grandchild Evaline Kajuju.
2. From form P& A it is indicated that parcel of land no. Kibirichia/Kibirichia/566 measuring 11.6 acres valued at approximately Kshs 1,00,000/- is the only estate property liable for distribution. Margaret Kabori M'Ikuigu – 4th wife was appointed Administratrix to the estate of the deceased on 24th April 2014.
3. By an application dated 23rd February 2016 she applied to have temporary grant confirmed. In her supporting affidavit she distributed LR Kibirichia/566 to:-
 - a. Agnes Karida Gitonga 3.50 acres,
 - b. Julius Mwiti – 1.00a acres
 - c. John Mugambi – 1.00 acres
 - d. Margaret Kabori – balance
4. Consent to distribution was signed by her and the 3 people name in the affidavit as beneficiaries.
5. Priscilla Kanyamu M'ikiugu filed affidavit of protest sworn on 20th September 2016 and said the deceased had 6 wives and 22 children and that Margaret Kabori didn't consult them when filing the cause. She said the administratrix was the last wife and needed their consent. She said the persons who gave consent are strangers to the estate.
6. By an application dated 14th May 2019 the deceased persons sons Daniel Maingi M'Ikiugu and David Kinot Kareu sought that grant that had been made to Margaret Kabori M'Ikiugu be revoked for reasons she obtained it fraudulently by concealment of material facts and without consent of the beneficiaries.
7. In application dated 18th September Priscilla Kanyamu M'ikiugu sought that grant made to Margaret Kabori M'Ikiugu on 14th March 2012 be confired. In her affidavit in support of the application for confirmation sworn on 18th September 2019 she made proposals for distribution of LR Kibirichia/Kibirichia/566 and Laikipia/Kalalu/1081 in paragraph 7.
8. The protestor and her witnesses testified that the deceased had 2 parcels of land and he didn't share them to anyone. She said she was the 1st wife and that her and 2nd wife occupied land in Kibirichia together with their children and that the land in Kibirichia should be shared by the sons of the deceased. She said she was not aware her husband wrote a will.
9. The 2nd Protestor witness adopted her statements and reiterated what the protestor had sand. She said she was told land in Laikipia was

purchased by her, the deceased and 1st wife. She said land in Kibirichia should be distributed to her. 1st wife and their children.

10. She said she didn't know the people who bought land in Kibirichia. She said the chief summoned them over purchase of land by Agnes and they told chief they were not aware of sale of land in Kibirichia. She said her husband could write his name.

11. Daniel Maingi – 3rd protestor witness and son of the deceased said chief had never summoned them over parcel of land in Kibirichia. He said he didn't know Agnes Karuti. He said he saw in documents served on them that Agnes bought a portion of land in Kibirichia. He said he didn't see a letter by doctor from hospital where the deceased died.

12. 4th Protestor witness David Kinoti also testified reiterating what the other witnesses said. He said he was born and raised on LR Kibirichia/566 and it is not true that the land was bought. He said he learnt from court documents that land had been sold but he didn't know how much land had been sold. He said he didn't know who the purchasers were.

13. Margaret kabori 5th wife to the deceased and petitioner herein testified that the deceased sold 3.5 acres of land to Agnes Karuti, 1.00 acre to John Mugambi and 1.00 acre to Julius Mwiti from LR Kibirichia/566. She said Julius Mugambi was in Ugamba and delayed on the way to court. she said there was an agreement for sale of land executed by an advocate. She said the deceased. Other wives and children was aware of the agreements.

14. Agnes Karuti testified that she bought 2.5 acres of land from the deceased and subsequently bought 1.00 acre for which he paid full purchase price. She produced the sale of land Agreements. She said that she bought land in 2009 and she informed Kajuju, Nyoroka and Muthoni and George. She said that it is Margarets children who were aware and that it is Margaret who occupied land that she bought. She said the other family members also occupied their portions. She said the deceased persons sons had their portions and it is the remaining balance that was sold to her. She said she didn't know if daughter were given land but 12 sons had been given land.

15. She said the other wives of the deceased were not present when she bought land. She said she didn't know where Priscilla stays. Julius Mwiti said he bought 1.00 acre of land from the deceased in 2011 at Kshs. 300,000/- - Ex P3 – Agreement. He said when he was buying land the deceased introduced Margaret as his wife. Land allegedly sold to Julius Mwiti and Agnes Karuta Gitonga were not yet transferred by the time the deceased died whereas Julius Mwiti Produced an agreement for sale of land showing he paid the full purchase price, Agnes Karuta Gitonga produced an agreement dated 29.4.2009 in which initial installment was Kshs. 78750/=. An acknowledgement allegedly thumbprinted by the deceased shows she paid Kshs 23,700/- on 10.6.2009.

16. There is also an acknowledgement of receipt of Kshs 80,825/- which was either paid on 18.1.2010 or 18.1.2000. There is an acknowledgement of Kshs. 100,000/- which is obviously not signed by same hand as that of the deceased dated 20.11.2012 about one month and 10 days before the deceased died.

17. On 27.11.2012 a further acknowledgement is allegedly signed by the deceased for Kshs 316,845/=.

18. On 30.8.2013 the Petitioner allegedly received Kshs 88,478/= from Agnes Karuta as final purchase piece for 2.50 acres in agreement dated 29.4.2009.

19. On 17.7.2015 Margaret Kabori again allegedly received Kshs 111,000/- being further payment for purchase for additional one acre.

20. The validity of the agreement for purchase of land between of Agnes Karuti and the deceased can't be validated by this court as it is suspicious.

21. As this court determined earlier the alleged will by the deceased was done on 27.12.2012 and it was witnessed by Dr. Butt while the deceased was in hospital and he died 3 days later. If it is true that Agnes Karuta had purchased the land before the deceased died, the advocate who allegedly attested to the agreement and acknowledgements of the purchase price received by the deceased even when it is obvious he was in his deathbed in hospital ought to have been called as a witness.

22. If it is true Agnes Karuta had paid up the purchase price in full and that deceased willed to her 3.50 acres of land out of LR Kibirichia/566. It is not explained why Agnes Karuta continued making payments after the deceased persons death.

23. This courts view is that the money allegedly paid by Agnes Karuta went for the benefit of the Petitioner and her children and the other children of the deceased should not be prejudiced by her indiscretion. Agnes Karuta should litigate the validity of her agreement in ELC.

24. LR Kibirichia/566 is to be distributed to :-

a. Julius Mwiti – 1.00 acre

b. Priscilla Kanyamu

c. Marthat Karambu and their children (sons and daughters) to share equally. Where any of the sons or daughters are deceased, their surviving children should take their shares.

d. Margaret K abori M'Ikiugu, Rose Karambu Kaloki M'Ikiugu (Deceased) plus their children to inherit LR Laikipia/Kalalu/1081 in equal shares.

HON A. ONG'INJO

JUDGE

RULING DELIVERED, DATED AND SIGNED IN COURT ON 27TH DAY OF FEBRUARY 2020.

In the presence of :

C/A: Kinoti

Petitioner :- Mr Mwiti Advocate holding for B. G. Kariuki for Petitioner

Protester/Respondent: No appearance.

HON A. ONG'INJO

JUDGE