



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MIGORI

[Coram: A. C. Mrima, J.]

SUCCESSION CAUSE NO. 21 OF 2018

IN THE MATTER OF THE ESTATE OF THOMAS MONANKA NYAGETA (DECEASED)

BETWEEN

SPRINAH NCHAGWA CHACHA.....1ST PETITIONER/PLAINTIFF

VERSUS

AGNES GATI CHACHA.....2ND PETITIONER/DEFENDANT

JUDGMENT

1. *Thomas Monanka Nyageta*, the deceased herein, passed on 10/01/2018 at Nyankore Sub-Location in Kuria West Sub-County within Migori County. The deceased was survived by his two wives who are the Petitioners in this cause as well as his children.
2. The second Petitioner herein, *Agnes Gati Chacha*, was the first wife of the deceased (hereinafter referred to as 'Agnes') whereas the first Petitioner herein, *Sprinah Nchagwa Chacha*, was the second wife (hereinafter referred to as 'Sprinah').
3. Following the death of the deceased, Agnes filed citation proceedings at the **Chief Magistrates Court at Migori in Succession Cause No. 152 of 2018**. Those proceedings were against Sprinah.
4. In response to the citation aforesaid, Sprinah petitioned for the administration of the estate of the deceased *vide* this Cause. A joint Grant of Letters of Administration Intestate in respect to the estate of the deceased was eventually issued to both Petitioners.
5. Subsequently, each of the Petitioners filed a Summons for confirmation of the Grant. Each summons was supported by an Affidavit.
6. Directions on the hearing of the twin summonses were taken. The parties proposed, and this Court approved, the hearing of the summonses by way of *viva voce* evidence. For purposes of the hearing, Sprinah was deemed as the Plaintiff whereas Agnes was deemed as the Defendant. Sprinah was represented by Counsel whereas Agnes appeared in person.
7. The Petitioners filed their respective statements. They both testified. None availed any witness.
8. Both Sprinah and Agnes agreed on the following as the only beneficiaries to the estate of the deceased: -

The First House

- | | | |
|-------------------------------------|---|---------------------------------|
| (i) <i>Agnes Gati Chacha</i> | - | <i>Widow (56 years old);</i> |
| (ii) <i>Patrick Mwita Martinus</i> | - | <i>Son (33 years old);</i> |
| (iii) <i>Bhoke Carolyne Monanka</i> | - | <i>Daughter (31 years old);</i> |
| (iv) <i>Rhobi Christine Monanka</i> | - | <i>Daughter (30 years old);</i> |
| (v) <i>Monanka Mbusio Josephine</i> | - | <i>Daughter (22 years old);</i> |

(v) IMM - Son (17 years old).

The Second House

(i) Sprinah Nchagwa Chacha - Widow (45 years old);

(ii) Felix Mwita Monanka - Son (21 years old);

(iii) ANW - Daughter (16 years old);

(iv) EEC - Son (10 years old).

9. Relying on her statement and the record, Sprinah testified that the estate of the deceased was comprised of the following properties: -

- (a) A residential property in Nairobi registered as L.R. No. Nairobi Block 78/213 Buruburu Phase IV;
- (b) A residential property in Nairobi registered as L.R. No. Nairobi Block 93/64 Golden Gate South B;
- (c) Motor vehicle registration number KAK 805Z make Range Rover;
- (d) Motor vehicle registration number KAA 200L make Mercedes Benz;
- (e) Bugumbe/Mabera/1216;
- (f) Bugumbe/Isebania/ 606;
- (g) Bugumbe/Isebania/607;
- (h) Money in Equity Bank Account No. [...] Buruburu Branch estimated to be around Kshs. 3,500,000/=;
- (i) Money in an MPESA Account amounting to Kshs. 7,000/=; and
- (j) Money to be recovered from Sospeter Muhucha amounting to Kshs. 68,000/=;

10. On the distribution of the estate, Sprinah testified that the Petitioners had agreed on how some of the properties may be devolved. Those properties were to devolve as follows: -

- (a) The residential property in Nairobi registered as L.R. No. Nairobi Block 78/213 Buruburu Phase IV to devolve to Sprinah;
- (b) The residential property in Nairobi registered as L.R. No. Nairobi Block 93/64 Golden Gate South B to devolve to Agnes;
- (c) The Motor vehicle registration number KAK 805Z make Range Rover to devolve to Sprinah;
- (d) The Motor vehicle registration number KAA 200L make Mercedes Benz to devolve to Agnes;
- (e) Once recovered, the sum of Kshs. 68,000/= be equally shared between Agnes and Sprinah;
- (f) The money in the MPESA Account to wholly devolve to Agnes;

11. According to Sprinah, the parties did not agree on the distribution of the following properties: -

- (i) Bugumbe/Mabera/1216;
- (ii) Bugumbe/Isebania/ 606;
- (iii) Bugumbe/Isebania/607; and
- (iv) The money in the Equity Bank Account.

12. As a result of the lack of consensus aforesaid, Sprinah proposed that this Court makes orders devolving the said properties. In respect to *Bugumbe/Mabera/1216* Sprinah stated that it was the matrimonial home. She further stated that the property was clearly demarcated into three portions. One of the portions had Agnes' house and another portion had Sprinah's house. The third portion was vacant and was generally used by the family for *inter alia* farming activities.

13. Sprinah therefore proposed that Agnes and herself do keep their respective portions with their houses thereon and the vacant portion be equally shared between the two.
14. In respect to the parcels of land known as Bugumbe/Isebania/606 and Bugumbe/Isebania/607, Sprinah testified that the parcel of land known as Bugumbe/Isebania/607 (hereinafter referred to as '**Plot No. 607**') was developed by the deceased and that the deceased put up a business premises thereon which he named '*Village Villa Motel*'. The deceased had let the premises to one Constantin G. Ngiracha at a monthly rent of Kshs. 20,000/=.
15. Sprinah stated that the parcel of land known as Bugumbe/Isebania/606 (hereinafter referred to as '**Plot No. 606**') was undeveloped.
16. It was strenuously contended by Sprinah that since the demise of the deceased Agnes took over the management of the premises on Plot No. 607 and had continued to unilaterally receive all the rental proceeds therefrom. Sprinah was categorical that as her intervention over the management of the premises on Plot No. 607 went unheeded then both Plot No. 606 and Plot No. 607 should be sold and the proceeds thereof equally shared between the two.
17. In respect of the money held in Equity Bank Account No. [...] Buruburu Branch, Sprinah proposed that all the costs she had incurred in respect of carrying out the valuation of all the estate properties be refunded to her. She proposed that the sum of Kshs. 3,500,000/= be shared at Kshs. 2,000,000/= to her and the balance to Agnes.
18. Buttrussing her proposition, Sprinah stated that her children, unlike the children of Agnes, were still very young and needed a lot of care and provision. She also stated that she had agreed to let Agnes own the residential premises on L.R. No. Nairobi Block 93/64 Golden Gate South B which was valued at Kshs. 15,000,000/= unlike her residential property on L.R. No. Nairobi Block 78/213 Buruburu Phase IV which was valued at Kshs. 9,000,000/=. In the face of the whopping Kshs. 6,000,000/= difference, Sprinah instead wondered why Agnes was not even grateful and she could not comprehend why Agnes cannot concede to her proposal and amicably settle the matter. Sprinah further stated that she was aware that the deceased gave a parcel of land to Patrick *Mwita Martinus*, the first born from the first house, and that she had never complained about that.
19. There was also a further claim by Agnes which Sprinah responded to. According to Agnes the deceased had told her that he had bought six other plots and another house in Nairobi and that all the documents thereto were in the custody of Sprinah. To her surprise, Sprinah denied the allegation. She stated that she could not do such a thing to Agnes whom she highly respected and that is why she had always reached out to Agnes to amicably sort out this matter. Sprinah then closed her case.
20. Agnes testified. She conceded to the beneficiaries as proposed by Sprinah. She also confirmed her agreement to the distribution of the six properties as stated by Sprinah. Agnes however sharply differed with Sprinah on the distribution of the rest of the properties.
21. On *Bugumbe/Mabera/1216*, Agnes contended that the parcel of land was bought by the deceased after she was married and long before Sprinah was married. The property could not be considered as the matrimonial home for Sprinah as she was bought another parcel of land at Kamworuru where she should instead settle with her family. Agnes proposed that the parcel of land known as *Bugumbe/Mabera/1216* do wholly devolve to her.
22. According to Agnes, Sprinah still has no share on Plot No. 606 and Plot No. 607. To her, the properties were also bought by the deceased long before Sprinah was married. She stated that Sprinah was married in 1996 whereas the properties were bought in 1993. Agnes contended that Plot No. 607 was developed and has been her sole source of income as she is unemployed unlike Sprinah who was a senior police officer. Agnes further stated that since the demise of the deceased the tenant vacated the premises and she put in a close relative just to take care of the premises as she looked for money to run the business herself. She also stated that the person in occupation of the premises paid her as and when he got anything small and that at times she would receive between Kshs. 2,000/= and Kshs. 6,000/=. Agnes however clarified that the payments were not on regular basis.
23. The proposal by Agnes on the money in the bank was that the sums be equally shared between the two of them. On the allegation that his son was given land by the deceased, Agnes stated that the land in issue was hers. Agnes clarified that she had bought the land at Kshs. 98,000/= in 1998 and that the deceased only added her Kshs. 30,000/= as to facilitate the purchase. Agnes held that it was therefore herself who gave the land to her son instead of the deceased.
24. Agnes then closed her case as well.
25. Both parties then filed their respective written submissions. They supported their positions on the distribution of the contested properties.
26. I have carefully perused the Summonses, the evidence, the exhibits and the submissions tendered. I have understood the respective cases.
27. There are some issues which are not in dispute in this matter. They include the beneficiaries and the distribution of some six properties forming part of the estate of the deceased.
28. The main dispute is on the distribution of four properties. Those properties are *Bugumbe/Mabera/1216*, Plot No. 606, Plot No. 607 and the money in the bank.
29. I will begin by ascertaining if the properties known as *Bugumbe/Mabera/1216*, Plot No. 606 and Plot No. 607 are properties of the deceased. According to the Certificate of official search dated 23/07/2018 the parcel of land known as *Bugumbe/Mabera/1216* is registered in the name of one *Peter Chacha Magige*. Plot No. 606 and Plot No. 607 are both registered in the name of *Ernest Chacha*.

30. I have also seen evidence of some transactions in respect to the three said properties between the registered owners and the deceased. There is also evidence that the homes for Agnes and Sprinah are currently on the parcel of land known as Bugumbe/Mabera/1216. It is also undisputed that the deceased ran a business on the premises standing on Plot No. 607 and that Plot No. 606 is still undeveloped.

31. Whereas the foregone is currently undisputed there is need for caution on the part of this Court. This Court is exercising its jurisdiction as a Succession Court. In that case its duty is principally to protect estates of deceased persons which it has jurisdiction over and to oversee the transmission of those estates to the lawful beneficiaries. This Court as well has the duty to deal with any dispute arising out of that mandate.

32. Suffice therefore to say that if the properties subject of dealing before a Succession Court, for whatever reasons, are not in the name of the deceased, then a Succession Court lacks any legal mandate to deal with such properties as the case may be.

33. The legal position that jurisdiction is everything is a well settled principle in law. My Lordship **Ibrahim, JSC** in **Supreme Court of Kenya Civil Application No. 11 of 2016 Hon. (Lady) Justice Kalpana H. Rawal vs. Judicial Service Commission & Others** when in demystifying jurisdiction quoted from the decision in **Supreme Court of Nigeria Supreme Case No. 11 of 2012 Ocheja Emmanuel Dangana vs. Hon. Atai Aidoko Aliusman & 4 Others** where **Walter Samuel Nkanu Onnoghen, JSC** and expressed himself as follows: -

...It is settled that jurisdiction is the life blood of any adjudication because a court or tribunal without jurisdiction is like an animal without blood, which means it is dead. A decision by a court or tribunal without requisite jurisdiction is a nullity - dead - and of no legal effect whatsoever, That is why an issue of jurisdiction is crucial and fundamental in adjudication and has to be dealt with first and foremost...

34. The Court of Appeal more recently in the case of **Kakuta Maimai Hamisi -vs- Peris Pesi Tobiko & 2 Others (2013) eKLR** had the following to say on the centrality of the issue of jurisdiction: -

So central and determinative is the jurisdiction that it is at once fundamental and over-arching as far as any judicial proceedings in concerned. It is a threshold question and best taken at inception. It is definitive and determinative and prompt pronouncement on it once it appears to be in issue in a consideration imposed on courts out of decent respect for economy and efficiency and necessary eschewing of a polite but ultimate futile undertaking of proceedings that will end in barren cui-de-sac. Courts, like nature, must not sit in vain.

35. On the source of a Court's jurisdiction, the **Supreme Court of Kenya** in the case of **Samuel Kamau Macharia & Another vs. Kenya Commercial Bank Limited & others (2012) eKLR** stated as follows: -

A court's jurisdiction flows from either the Constitution or legislation or both. Thus, a court of law can only exercise jurisdiction as conferred by the Constitution or other written law. It cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by law. We agree with counsels for the first and second respondents in his submission that the issue as to whether a Court of law has jurisdiction to entertain a matter before it, is not one of mere procedural technicality, it goes to the very heart of the matter, for without jurisdiction, the Court cannot entertain any proceedings ... where the Constitution exhaustively provides for the jurisdiction of a Court of law, the Court must operate within the constitutional limits. It cannot expand its jurisdiction through judicial craft or innovation. Nor can Parliament confer jurisdiction upon a Court of law beyond the scope defined by the Constitution. Where the Constitution confers power upon Parliament to set the jurisdiction of a Court of law or tribunal, the legislature would be within its authority to prescribe the jurisdiction of such a court or tribunal by statute law.

36. In this case the properties known as Bugumbe/Mabera/1216, Plot No. 606 and Plot No. 607 are not registered in the name of the deceased. It will therefore be an affront to the law for this Court to deem the said three properties which are yet to be legally transmitted to the deceased as the properties of the deceased. Those properties, even in the face of no objection, are yet to form part of the estate of the deceased. I am therefore called upon to exercise caution, which I hereby oblige.

37. There is no doubt that the money in the Equity Bank belonged to the deceased. However, I am of the very considered position that it is prudent that the distribution of the funds be done alongside the distribution of the properties known as Bugumbe/Mabera/1216, Plot No. 606 and Plot No. 607. I say so because the distribution of the said three properties will definitely have a bearing on how the sums in the bank shall be dealt with.

38. Having said so and in view of parties' positions in this matter, the following orders do hereby issue: -

(a) The joint Grant of Letters of Administration Intestate issued to Agnes Gati Chacha and Sprinah Nchagwa Chacha on 07/02/2019 be and is hereby confirmed.

(b) There shall be partial distribution of the properties forming the estate of Thomas Monanka Nyageta, the deceased herein, and as follows: -

(i) The residential property in Nairobi registered as L.R. No. Nairobi Block 78/213 Buruburu Phase IV shall devolve to Sprinah Nchagwa Chacha;

(ii) The residential property in Nairobi registered as L.R. No. Nairobi Block 93/64 Golden Gate South B shall devolve to Agnes Gati Chacha;

(iii) The Motor vehicle registration number KAK 805Z make Range Rover shall devolve to Sprinah Nchagwa Chacha;

(iv) The Motor vehicle registration number KAA 200L make Mercedes Benz shall devolve to Agnes Gati Chacha;

(v) Once recovered, the sum of Kshs. 68,000/= be equally shared between Agnes Gati Chacha and Sprinah Nchagwa Chacha;

(vi) The money in the MPESA Account shall wholly devolve to Agnes Gati Chacha.

(c) A Certificate of Confirmation of the Grant and Partial Distribution of the estate properties shall be forthwith issued.

(d) This Court has no jurisdiction to determine the distribution of the properties known as Bugumbe/Mabera/1216, Bugumbe/Isebania/606 and Bugumbe/Isebania/607 for the reason that the said properties are currently not registered in the name of Thomas Monanka Nyageta, the deceased in this Cause.

(e) Resulting from (d) above; the parties in this matter shall take necessary steps towards registering the properties known as Bugumbe/Mabera/1216, Bugumbe/Isebania/606 and Bugumbe/Isebania/607 in the name of Thomas Monanka Nyageta, the deceased in this Cause.

(f) In the event the parties are able to register the properties known as Bugumbe/Mabera/1216, Bugumbe/Isebania/606 and Bugumbe/Isebania/607 in the name of Thomas Monanka Nyageta, then deceased in this Cause, then this Court shall deal with the distribution of those properties together with the money held in Equity Bank Account No. 0950193648935 Buruburu Branch.

(g) This matter shall be fixed for a Mention to ascertain the then position on /05/2020.

(h) Costs shall await the final orders of this Court on the distribution of the remaining properties.

(i) Parties be at liberty to apply.

Orders accordingly.

DELIVERED, DATED and SIGNED at MIGORI this 28th day of May, 2020.

A. C. MRIMA

JUDGE

Judgment delivered electronically: -

1. amugaadvocates@live.co.uk for Amuga & Company Advocates for the First Petitioner/Plaintiff.

2. Agnes Gati Chacha, the second Petitioner/Defendant in person.

3. Parties are at liberty to obtain hard copies of the Ruling from the Registry upon payment of the requisite charges.

A. C. MRIMA

JUDGE