



REPUBLIC OF KENYA.

IN THE HIGH COURT OF KENYA AT BUNGOMA.

SUCCESSION CAUSE NO. 370 OF 2013

IN THE ESTATE OF THE LATE SIKWATA MONI alias PATROBA SIKWATA MONI...DECEASED

SAULO WAFULA SIKWATA.....PETITIONER

AND

JOSEPH WEKESA SIKWATA.....1ST OBJECTOR

AND

TIMINA SITAWA SIKWATA.....2ND OBJECTOR

VINCENT WAMBILA SIFUMBUKHO.....3RD OBJECTOR

DAVID KHISA WABWILE.....4TH OBJECTOR

JUDGMENT

PATROBA SIKWATA SIKWATA died Intestate on 11.2.2001. He left as assets, Ndivisi/Ndivisi/219 measuring 4.98 Hectares and Ndivisi/Ndivisi/246 measuring 18.0 Hectares. He left surviving him 8 sons and four daughters. He also had six liabilities being purchasers of his land.

Saulo Wafula Sikwata son of the deceased filed this Succession Cause and applied for grant of letters of administration intestate which was granted on 11th March, 2014. By Notice of Motion 18th July, Saulo Wafula Sakwata applied for confirmation of the grant and annexed the schedule of proposed distribution of the estate among the beneficiaries. The same was confirmed on 12th May, 2015.

By application dated 19th June, 2015, (1) **Joseph Wekesa** (1st Objection) (2) **David Khisa Wabwile** (2nd Objector), (3) **John Situma Wekesa** (3rd Objector) (4) **Alfayo Wangila Watila** (4th Objector) (5) **Vincent Lyambila Sifumbukho** (5th Objector) filed Summons for Revocation and annulment of the Grant on the grounds that the same was obtained fraudulently and other beneficiaries were left out of the distribution. In the alternative the applications asked the court to order the 1st Objector Joseph Wekesa Sikwata be a Co-petitioner and/or Administrator of the estate together with the Petitioner Saulo Wafula Sikwata.

This Court by order dated 12th November, 2015 appointed Saulo Wafula Sikwata and 1st Objector Joseph Wekesa Sikwata as Co-Administrators to the estate.

According to information on Form P & A 5, the deceased had the following surviving him:-

1. **Saulo Wafula Sikwata** - Son
2. **Jackson Pepela Sikwata** - Son
3. **Emmanuel Khisa Sikwata** - Son
4. **Joseph Wekesa Sikwata** - Son
5. **George Wanjala Sikwata** - Son

6. *John Lusweti Sikwata* - Son
7. *Simon Bilauni Chepuchie* - Son
8. *Ambrose Masambu Chepuchie* - Son
9. *Namwaya Chepuchie* - Daughter
10. *Felima Chepuchie* - Daughter
11. *Metrine Chepuchie* - Daughter
12. *Jackleen Natacho Sikwata* - Daughter

He also had the following Assets”

- (1). *Ndivisi/Ndivisi/219 - 4.98 Hectares (Approximatly..12 Acres)*
- (2). *Ndivisi/Ndivisi/246 - 18.0 Acres*

He had the following liabilities which consisted of parcels of land sold to the following:-

1. *Timina Sikwata Sitawa*
2. *Vincent Wambila Sifumbukho*
3. *David Khisa Wambile*
4. *Alfayo Wanjala Watila*

M/s Nanzushi appeared for Objector and Mr. Otsiula for Petitioner. By directions of this court, the objectors, objection was heard by viva voce evidence.

Ow1 Vincent Wambila Sifumbukho, the 3rd objector testified that the deceased was his uncle as he is his mother’s follower. He stated that in 1985 he bought 2 acres of land from the deceased at a purchase price of Kshs.8,000/= from parcel No. 219. He took possession of the same and he produced a sale agreement for the same. He stated that the deceased signed the agreement.

Ow2 Alfayo Wanjala Wekesa the 5th Objector stated that his father is Peter Wekesa Watila and that the deceased had given his father 2 acres of land the 1960’s from Parcel No. 246. He stated that his mother is buried on that parcel of land.

Ow3 David Khisa Wabwile the 4th Objector testified that he is the son of Charles Wabwile Moni a brother to the deceased Patroba Sikwata. He is claiming 3 acres from Parcel No. 246. He stated that the deceased gave them 3 acres of land. On being cross-examined by Otsiula, he admitted that his brother Richard Wanyonyi has a parcel of land in Sinoko on another her parcel of land.

Ow4 Hudson Sasaka Katoyi who is a neighbour to the deceased testified that he was a witness when the deceased sold land to the 3rd Objector Vincent Wambila. He also confirmed in Cross-examination that Richard Wanyonyi the brother of David Khisa the 4th Objector stays in the land belonging to Charles Wabwile who is also the father of the 4th Objector David Khisa.

Pw1 Timina Sitawa Patroba Sikwata the widow of the deceased adopted her witness statement dated 23.11.2018. She testified that Vincent Wambila 3rd Objector did not buy land from the deceased. She testified that Charles Wabwile Moni the father of David Khisa Nabwile was buried on Parcel No. Ndivisi/Ndivisi/246 by mistake. She also stated that Peter Wekesa Watila who is the father of Alfayo Wanjala Watita the 5th Objector was also buried on Ndivisi/Ndivisi/246 although he ought to have been buried on his land in Lukusi Location. She therefore concluded that Vincent Wambila (3rd Objector) David Khisa (4th Objector) and Alfayo Wanjala Watila have no right to inherit any part of the estate.

Pw2 John Lusweti Sikwata adopted his witness statement dated 23.11.2018 and filed in court on 28.11.2018. He stated that Vincent Wambila 3rd Objector did not buy land from deceased; that Charles Moni the father of 4th Objector was buried in Ndivisi/Ndivisi/246, by mistake, that Charles Wabwile Moni the father of David Khisa (4th Objector) was also buried in No. 246 by mistake. He also confirmed that Peter Wekesa Watila the father of Alfayo Wanjala Watila (5th Objector) was also buried on the same land parcel Ndivisi/Ndivisi/246 although he had land at Froyi area in Lukusi Location.

Upon cross-examination by M/s Nanzushi he stated that he knew deceased wanted to sell land to Vincent Liambila but did not know of the sale agreement produced in court. He also confirmed that David Khisa is still staying on land Parcel Ndivisi/Ndivisi/246, although his brother moved away to another parcel of land.

M/s Nanzushi for Objectors submitted that the Objectors have proved their objection and demonstrated that they should get their entitlement from the estate. She submitted that Vincent Wambila should get 2 acres, David Khisa Wabwile 3 acres and Alfayo Wanjala 2 acres from land Parcel No. Ndivisi/Ndivisi/246.

From the evidence and submission, it is not in contention that the deceased Patroba Sikwala Moni died on 11.2.2001 intestate. He had the following assets in his name;

(1) Ndivisi/Ndivisi/219 measuring 4.98 Hectares

(2) Ndivisi/Ndivisi/246 measuring 18.0 Acres

He also had the following liabilities being parcels of land sold to;

1. Mary Wekesa

2. Mark Wamocho

3. Wabwire Moni

4. Vincent Liambila Sifumbukho

5. Nelson Namusasi

6. Masai PAG

He had the following beneficiaries being sons and daughters;

surviving him:-

1. Saulo Wafula Sikwata - Son

2. Jackson Pepela Sikwata - Son

3. Emmauel Khisa Sikwata - Son

4. Joseph Wekesa Sikwata - Son

5. George Wanjala Sikwata - Son

6. John Lusweti Sikwata - Son

7. Simon Bilauni Chepuchie - Son

8. Ambrose Masambu Chepuchie - Son

9. Namwaya Chepuchie - Daughter

10. Felima Chepuchie - Daughter

11. Metrine Chepuchie - Daughter

12. Jackleen Natacho Sikwata - Daughter

There is no dispute as to the dependants who are sons and daughters of the deceased. The only issue in these proceedings is in respect of the Objectors who claim part of the estate as purchasers who bought land from the deceased and took possession during his lifetime but had not transferred to them (3rd Objector Vincent Liambila Sifumbukho) and those claiming that the deceased held the land in trust for them (David Khisa Wabwile - 4th Objector) and Alfayo Wanjala Watila (5th Objector).

Where the deceased had died without a will, his free estate is subject to distribution under the law of Succession Act. The jurisdiction of family court in a Succession matter is to determine who the beneficiaries are, what property comprise the estate and mode of distribution (Section 26 - 42 of the Act). The distribution of the estate must be aimed at achieving the following objectives under the Act.

1. All deceased free estate to be distributed.

2. All beneficiaries or dependants to be provided for.

3. *The distribution be equal or at least equitable.*

4. *The liabilities of the estate be provided for.*

5. *Where developments have been done on land by dependants distribution be such that there is minimum disruption.*

Section 29 of the Law of Succession Act stipulates who dependants of the deceased are. It provides:-

“For the purposes of this part, “dependant” means-

(a) the wife or wives, or former wife or wives, and the children of the deceased whether or not maintained by the deceased immediately prior to his death;

(b) such of the deceased’s parents, step parents, grandparents, grandchildren, children whom the deceased had taken into his family as his own, brothers and sisters, and half brothers and half sisters, as were being maintained by the deceased immediately prior to his death;

(c) where the deceased was a woman, her husband if he was being maintained by her immediately prior to the date of her death.”

The administrator in distributing the assets should consider the name dependants as beneficiaries to the estate.

In this case, the objectors are claiming share of the estate as they are liabilities.

1. VINCENT WAMBILA SIFUMBUKHO (3RD OBJECTOR):

His claim is based on purchase of land from deceased in 1985 measuring 2 Acres. He produced a Sale Agreement signed by the deceased drawn by Ben Chepuche Kikwata and witnessed by Patrick W. Munyasia and Geoffrey Wambila. He was given possession of the property. He is still in occupation. Pw2 John Lusweti Sikwata, in his evidence testified that he knew deceased wanted to sell land to Vincent but denied knowing about the Agreement. In P&A 5 Form, Saulo Wafula Sikwata the Petitioner had listed him as among the liabilities. Saulo Sikwata did not testify to challenge the evidence of Vincent. I am therefore satisfied on the evidence that Vincent Liambila Sifumbukho is entitled to 2 Acres from the estate.

2. DAVID KHISA WABWILE (4TH OBJECTOR):

His claim is premised on the fact that he is the son of Charles Wabwile Moni a brother to Patroba Sikwati the deceased. The deceased held the land in trust for his father. The deceased divided his land for his brother. He demarcated the land for them. When Charles Wabwile died, he was buried on the Land. Both the widow Timina Sikwata and Son John admitted that Charles Wabwile Moni was buried on the land during the deceased life time and they had been given the land by the deceased but it was a mistake. In P&A 5 he is included as liability. From the evidence the deceased had allocated the land to the father, his brother Charles Wabwile during his lifetime and they have been staying there. I am satisfied that he is entitled to the 3 Acres given to his father.

3. ALFAYO WANJALA WAFULA (5TH OBJECTOR)

He was the son of Peter Wekesa Watila the brother of the deceased Patroba Sikwata Moni. Peter died in 1961 and the land was registered in the name of deceased Patroba Sikwata in trust of the children of Peter Watila. He was buried on Parcel No. 246. Peter’s wife also died recently and was buried on the same land. Pw2 John Lusweti confirmed that Peter Wekesa Watila’s Children are staying on the land.

In **Jack Gitari Mieri -Vs- Kaari Muriithi & Another (2016) eKLR** on the claim in Succession based on the trust the Court stated:-

“I doubt if the jurisdiction of a family court will extend to ascertaining whether or not a deceased held some property in trust unless such a trust has already been established, decreed or is admitted. The family court can only inquire into such a trust if the same is claimed as a liability of the estate and not otherwise.”

In the present cause, it has been established that Vincent Wambila Sifumbukho the 3rd Objector bought 2 acres from the deceased when he was alive. The deceased put him in possession of the same stayed and the objector is still staying on the parcel of land although the deceased did not during his lifetime transfer the purchased property to him. The Petitioner indicated him in Form P&A 5 as a liability for which provisions had to be made for. In my finding, therefore, the purchased property was a liability of the estate and the 3rd Objector is entitled to the 2 acres from the estate.

David Khisa Wabwile 4th Objector and Alfayo Wanjala Watila have established that their parents were brother to the deceased and during demarcation and registration, the deceased who was the elder brother had the land registered in his name in trust for them. I am fortified in his finding by the fact that the deceased partitioned for them the land on the ground with clear boundaries in his life time, stayed comfortably with them, and when the brother died was buried on the land demarcated for them and their children are still staying on the land.

Timina Sitawa Sikwata the widow of the deceased Patroba Sikwata and her son John Lusweti Sikwata confirmed that fact in their evidence

in Court. I am therefore, persuaded that they have established liability on the basis that the deceased Patroba had the land registered in his name in trust for his brothers Charles Wabwile Moni, the father of the 4th Objector David Khisa Wabwile and Peter Wekesa Watila the father of Alfayo Wanjala Watila.

The Court having appointed Saulo Wafula Sikwata and Joseph Wekesa Sikwata as co-administrator, advised them to file a joint mode of distribution of the estate. They were unable to agree on a joint mode of distribution. This court requested each one of them to file a mode of distribution together with their schedule of distribution

Saulo Wafula Sikwata filed the following mode of distribution:

L.R. NO. NDIVISI/NDIVISI/246 (19 ACRES):

1. Saulo Wafula Sikwata	Ndivisi/Ndivisi/246	5 Acres
2. Emmanuel Khisa Sikwata	Ndivisi/Ndivisi/246	3½ Acres
3. John Lusweti Sikwata	Ndivisi/Ndivisi/246	6 Acres
4. Jackson Pepela Sikwata	Ndivisi/Ndivisi/246	4½ Acres

L.R. NO. NDIVISI/NDIVISI/219 (12 ACRES):

5. Joseph Wekesa Sikwata	Ndivisi/Ndivisi/219	3 Acres
6. George Wanjala Sikwata	Ndivisi/Ndivisi/219	3 Acres
7. Jackline N. Sikwata	Ndivisi/Ndivisi/219	2 Acres
8. Bilaune Chepuchie	Ndivisi/Ndivisi/219	1 Acres
9. Ambrose Chepuchie	Ndivisi/Ndivisi/219	1 Acres
10. Nanwaya Chepuchie	Ndivisi/Ndivisi/219	
11. Velma Chepuchie	Ndivisi/Ndivisi/219	1 Acre
12. Maureen Chepuchie	Ndivisi/Ndivisi/219	

Joseph Wekesa Sikwata filed the following mode of distribution:-

PARCEL NO. NDIVISI/NDIVISI/246:

1. Saulo Wafula Sikwata	3.0
2. Robert Pepela Wafula	1.5
3. Jackson Pepela Sikwata	3.9
4. John Lusweti Sikwata	2.0
5. David Khisa Wabwile	2.0
6. Alex Sikuku Wabwile	1.0
7. Alfayo Wanjala Watila	1.5
8. John Situma Wekesa	0.5
9. Mark Wamocha (the father bought him land)	0
10. P.A.G. Church C/o Jackson Pepela Sikwata	0.1
11. Emmanuel Khisa	2.5

TOTAL

18.0

It is noted that the proposed mode of distribution by Saulo Wafula Sikwata has left out the objectors for which the court has found should be provided for. I, therefore distribute the estate as hereunder;

PARCEL NO. NDIVISI/NDIVISI/246:

1. Saulo Wafula Sikwata	3.0
2. Robert Pepela Wafula	1.5
3. Jackson Pepela Sikwata	3.9
4. John Lusweti Sikwata	2.0
5. David Khisa Wabwile	2.0
6. Alex Sikuku Wabwile	1.0
7. Alfayo Wanjala Watila	1.5
8. John Situma Wekesa	0.5
9. Mark Wamocha (the father bought him land)	0
10. P.A.G. Church C/o Jackson Pepela Sikwata	0.1
11. Emmanuel Khisa	2.5

TOTAL

18.0

Each party to bear their own costs.

Dated and Delivered at Bungoma this 30th day of October, 2020.

S.N. RIECHI

JUDGE