



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT MURANG'A**

**SUCCESSION CAUSE NO. 845 OF 2015**

**RE ESTATE OF HILLARY CHEGE GICHURE (DECEASED)**

**JOYCE MBAIRE CHEGE.....PETITIONER**

**VERSUS**

**GLADYS NJOKI CHEGE.....PROTESTOR**

**JUDGMENT**

1. Hillary Chege Gichure (hereafter *the deceased*) died intestate on 2<sup>nd</sup> February 2015.
2. A petition for letters of administration was presented by Joyce Mbaire (hereafter *the petitioner*) on 12<sup>th</sup> November 2015. A grant was issued to her on 9<sup>th</sup> November 2016.
3. A summons for confirmation of the grant was taken out on 12<sup>th</sup> May 2017. However, an affidavit of protest was lodged on 20<sup>th</sup> November 2017 by Gladys Njoki (hereafter *the protestor*) who claimed to be a co-wife of the petitioner. She objected to the mode of distribution proposed by the petitioner.
4. On 7<sup>th</sup> May 2019, I directed that the protested summons be heard by *viva voce* evidence. Each of the disputants relied largely on their earlier depositions dated 22<sup>nd</sup> October 2018 and 26<sup>th</sup> November 2017 respectively and cross examined.
5. It is not disputed that the deceased married Joyce Mbaire (*the petitioner*) in the year 1958 under *Gikuyu* customary law. On 2<sup>nd</sup> August 1986, they converted the union into a *monogamous* marriage at Saint John's Church, Nyangiti under the **African Christian Marriage and Divorce Act** (now repealed). The certificate of marriage was produced as exhibit 1.
6. In the year 2004, the deceased took Gladys Njoki (*the protestor*) as a second wife. At the time, the earlier marriage was still subsisting. I thus readily find that he lacked legal capacity to contract the marriage with the protestor. But that is *not* to say that the protestor and her children are not dependents.
7. The protestor came into the marriage with six children. She however bore the deceased a *son*, a fact which the petitioner claims influenced him to isolate her as she only had daughters.
8. What is disconcerting is that the protestor moved into the matrimonial home of the 1<sup>st</sup> wife on *Loc 13/Gakoe/542* and evicted her from her house. The protestor denied that she and her children threw out the petitioner, but I have no cause to doubt the petitioner who now lives with her children.
9. By the time the deceased took his "second wife" all the assets that are the subject matter of the suit had been acquired. But at the time he died, he had transferred the matrimonial home, *Loc 13/Gakoe/542*, jointly into his name and that of the protestor. The new title was issued on 1<sup>st</sup> April 2011.
10. The protestor also admitted in cross examination that she is the sole beneficiary of his pension and shares in two companies listed on the Nairobi Stock Exchange.
11. But the protestor still wants more. The administrator proposed in court that the matrimonial property (*Loc 13/Gakoe/542*) which measures 0.5981 Hectares be shared as follows: 1.4 acres to the *protestor* and the remaining portion of 0.4 acres to the *petitioner*. But the protestor will hear none of it. Given the history I have highlighted the protestations are unmerited. In the interests of justice, I find that the property should be divided as proposed by the petitioner. For the avoidance of doubt, and noting that the protestor and the deceased were joint owners, the 0.4 acres to the petitioner shall be transmitted from the part belonging to the deceased.

12. Regarding the land known as *Loc 13/Gakoe/1329/8* the petitioner led cogent evidence to show she was in possession and had constructed a slaughterhouse on it as far back as 1978. She also produced the original receipts for payment of local rates to the County (exhibits 4A & B). I found the claims by the protestor to that plot to be rather feeble and tenuous. I find that plot *Loc 13/Gakoe/1329/8* shall devolve wholly to the petitioner.

13. Although the petitioner was in possession of the original title for the land known as *North Sakwa/Kamasoga/1020* issued in 1978 (exhibit 2) registered under the **Registered Land Act** (now repealed), the property seems to have been subdivided into two to become *North Sakwa/Kamasoga/1494* and *North Sakwa/Kamasoga/1495* both in the names of the deceased. It is not clear how the transaction was done but the protestor said that she and the deceased attended the registry and that upon confirmation that the original was lost, the new titles were issued.

14. The protestor proposes to inherit *North Sakwa/Kamasoga/1494* and that the other title *North Sakwa/Kamasoga/1495* goes to the petitioner. The petitioner claimed that she and the deceased bought the land. But there was a dearth of evidence on that point. I thus find the proposal by the *petitioner* to keep both portions *unreasonable*. I find that the two properties shall be distributed as proposed by the *protestor*.

15. Lastly, there are some other properties that do not form part of the dispute. For instance, *Loc 13/Gakoe/1197* was transferred back in 2011 (during the lifetime of the deceased) to the petitioner and her children as per the official search marked *GNC11* in the affidavit of the protestor of 20<sup>th</sup> November 2017. It thus no longer forms part of the estate of the deceased.

16. I *cannot* also begrudge the protestor for keeping the pension or the undisclosed shares in the two companies at the Nairobi Stock Exchange. The latter assets were *neither* disclosed in the petition *nor* in the affidavit of protest; and, *no* sufficient evidence was led on the matter.

17. The upshot is that the disputed assets shall be distributed as follows-

i. *Loc 13/Gakoe/542* which measures 0.5981 Hectares shall be shared between the *petitioner* and the *protestor* as follows: 1.4 acres shall go to the *protestor*. The remaining portion of 0.4 acres shall devolve to the *petitioner*. For the avoidance of doubt, and noting that the protestor and deceased were registered jointly, the 0.4 acres to the petitioner shall be transmitted from the part belonging to the deceased.

ii. *Loc 13/Gakoe/1329/8* shall devolve wholly to the *petitioner*.

iii. *North Sakwa/Kamasoga/1494* shall be registered in the name of the *protestor*.

iv. *North Sakwa/Kamasoga/1495* shall be registered in the name of the *petitioner*.

18. The grant shall be confirmed in terms of this judgment.

19. Costs follow the event and are at the discretion of the court. In the interests of justice, each party shall bear its own costs.

It is so ordered.

**DATED, SIGNED and DELIVERED** at MURANG'A this 18<sup>th</sup> day of December 2020.

**KANYI KIMONDO**

**JUDGE**

**Judgment read in open court in the presence of:**

The protestor (in person).

Mr. Mbue for the petitioner instructed by Mbue Ndegwa & Co. Advocates.

Ms. Dorcas Waichuhi, Court Assistant.