



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

SUCCESSION CAUSE NO. 323 OF 2011

IN THE MATTER OF THE ESTATE OF CHRISTINE KANYUA CHOKERA (DECEASED)

ANASTACIA KENDIPETITIONER/APPLICANT

VERSUS

MICHAEL MURITHI MUTHAURARESPONDENT

AND

JOSEPH MUKINDIA JOSPHAT.....INTERESTED/PARTY

JUDGMENT

1. This Cause relates to the estate of **Christine Kanyua Chokera (“deceased”)** who died on 27th August, 2004. She left behind surviving her **Michael Murithi Muthaura (husband), Kelvin Kimathi (son), BM (son)** a minor at the time and **Anastacia Kendi (daughter)**.

2. She also left behind as her estate the following properties:-

- a) **LR NO. Nanyuki/Municipality Block 1/121 (Mountex)**
- b) **LR NO. Nanyuki/Municipality Block 1/120 (Mountex)**
- c) **LR NO. Donyo Sabuk Komarock Block 1/6996**
- d) **1000 shares with Kenya Airways.**

3. On 4th July 2011, a grant of letters of administration intestate was issued to **Anastacia Kendi and Michael Murithi Muthaura** jointly. By summons for confirmation of grant dated 16th December 2018, **Anastacia Kendi (“the applicant”)** proposed to distribute the estate of the deceased as follows:-

- a) **L.R Nanyuki Municipality Block 1/121 to Kelvin Kimathi**
- b) **L.R Nanyuki Municipality Block 1/120 (Mountex) to BM to be held in trust by Annastacia Kendi**
- c) **L.R NO. Donyo Sabuk Komarock Block 1/6996 to Anastacia Kendi**
- d) **1000 Shares with Kenya Airways to be shared between Kelvin Kimathi, BM and Anastacia Kendi with the share of BM (Minor) being held in trust by Anastacia Kendi.**

4. On the other hand, **Michael Murithi Muthaura (“the Respondent”)** filed his proposed mode of distribution on 6th November 2018. He contended that the deceased had sold land parcel numbers **Nanyuki Municipality Block1 (Mountex)/ 121 and Nanyuki Municipality Block 1/120** to **Joseph Mukindia Josephat**, the interested party. He therefore gave his own mode of distribution.

5. The interested party filed an affidavit of protest to the summons for confirmation of grant contending that the deceased had sold to him **Land Parcel Numbers Nanyuki/Municipality/121 And Nanyuki Municipality Block1/120.**

6. This matter was determined through witness statements and affidavits on which the Counsels agreed to submit on. In her witness statement and affidavits on record, **Anastacia Kendi** contended that she was a daughter of the deceased and that all the properties forming the estate were acquired by the deceased single handedly before her marriage to the respondent. That the respondent only lived with the deceased for 6 months, a period which he was so brutal to the deceased and the petitioner that the petitioner decided to run away to her grandparents.
7. On his part, the respondent told the court that he was married to the deceased in 1995 under the Meru customary law. That he solemnized his marriage with the deceased on 28th February, 2004. That he was the one who purchased the properties for the deceased after they married in 1995. That due to sickness, the deceased had sold two of the properties to the interested party.
8. The respondent therefore urged that two of the properties, **Nanyuki/Municipality Block 1/ 120 and Nanyuki/Municipality Block 1/121** be distributed to the interested party. He produced a copy of the transfer dated 3rd February, 2004 to support that contention.
9. On the other hand, the interested party stated that he purchased the two properties from the deceased on 3rd February, 2004 and that the deceased used the proceeds therefrom for treatment.
10. I have carefully considered the affidavits on record, the witness statements of the witnesses and the submission of the respondent's Counsel. The issues that fall for determination are; ***who are the rightful beneficiaries of the deceased? What constitutes the estate of the deceased and how should it be distributed?***
11. On the first issue, there was no dispute that the deceased was married to the respondent. They solemnized their marriage at the **Methodist Church Gakoromone** on 28th February, 2004, some six months before she passed on. The deceased was blessed with three children **Anastacia Kendi, Kelvin Kimathi and BM**.
12. Accordingly, the deceased was survived by **Michael Murithi Muthaura, Anastacia Kendi, Kelvin Kimathi and BM**.
13. The second issue is the property that constitute the estate. On record, there are search certificates for **Nanyuki/Municipality Block1/120 (Mountex), Nanyuki/Municipality Block1/121 (Mountex) and L.R. Donyo Sabuk/Komarock Block 1/6996**. There is also a Share Certificate for 1000 shares for Kenya Airways. Since there is no dispute about the Kenya Airways shares and the **Donyo Sabuk/Komarock** property, I make a finding that they form part of the deceased's estate.
14. As regards **Nanyuki/Municipality Block1/120 (Mountex), and Nanyuki/Municipality Block1/121 (Mountex)**, the respondent and the interested party contend that the two properties were sold by the deceased to the interested party before she died. They produced a copy of a sale agreement allegedly executed on 3rd February, 2004 showing that, the interested party paid KShs.180,000/- only for the two properties.
15. On the other hand, the petitioner contended that the two properties were purchased by the deceased single handedly. That the respondent should not get anything from the estate of the deceased as he had kept away her children from his own properties. The applicant denied that the deceased had sold the two properties to the interested party as claimed by the interested party and the respondent.
16. The starting point is the date of marriage of the deceased to the respondent. The respondent did not tell the court which month he allegedly married the deceased customarily. He only stated that it was in 1995. The applicant stated that the two were only married for six months in 2004. There was nothing that prevented the respondent from disclosing the actual month in 1995 when the alleged Meru customary marriage rites took place.
17. Further, the respondent did not lead or call any evidence, save for the statement in affidavit and the witness statement, to prove that he married the deceased in 1995. The year 1995 is important because, it is on 18th April, 1995 that the deceased purchased and was registered as the owner of the said two properties. The allegation that the respondent purchased the two properties for the deceased is but wishful thinking. He did not tell the court from who he purchased the two properties and for how much.
18. On the issue of the alleged sale of the two properties to the interested party, the applicant denied that the signature appearing on the sale agreement was that of the deceased. She stated that it was different from the deceased's known signature which she knew very well. She invited the court to compare the signature said to belong to the deceased on the sale agreement relied on and conclude that it differed with the deceased's signature on the Marriage Certificate on record.
19. It is not clear who drew the sale agreement. It is shown to have been allegedly executed on 3rd February, 2004. The witness to the execution is the respondent. The deceased died on 27th August, 2004, six months later. To my mind, that sale agreement is suspect. With a naked eye, a comparison of the signature of the deceased in that document with the one in the Marriage Certificate shows that the two differ. The interested party did not produce any evidence to show how, when and where he paid the deceased the purchase price for the alleged sale.
20. In any event, if the sale agreement was indeed entered in February, 2004, why was the transfer not effected before the deceased died six months later? To my mind, the document produced as a sale agreement for the two properties is a misleading document by the respondent with the assistance and connivance of the interested party to defraud the estate of the two properties. In any event, there is nothing to show that the interested party had made any claim against the estate between August, 2004 and 2011 and proved it. Why wait for six months (February, 2004 and August 2004) and then seven years (2004 and 2011) before claiming the two properties?
21. It is not lost of this court that, the deceased lived in Meru. According to the Eulogy, she was admitted to Meru District Hospital where she died on 28th August, 2004. That notwithstanding, the respondent went all the way to Nanyuki to lodge **Succession Cause No 16 of 2009 at the Senior Principal Magistrates' Court, Nanyuki** where he obtained a grant on 7th June, 2009. It took the orders of Kasango J of 27th May, 2011 for that file to be brought to this court and halt the proceedings therein.

22. With the foregoing, the court is left with no alternative but to infer bad faith on the part of the respondent. He never involved the children of the deceased when he lodged and prosecuted the said proceedings at Nanyuki. He left them in limbo in Meru. The irresistible inference is that the respondent intended to proceed and conclude the succession of the estate far away from the children of the deceased and in the process defraud them of the two properties with the help of the Interested Party.

21. Accordingly, the two properties form part of the estate of the deceased and are available for distribution.

22. As regards distribution, I have considered the representations and contentions by all the parties. I have already made a finding that the properties were acquired by the deceased solely. The applicant contended and it was not disputed by the respondent that he never brought on board any of the properties he had before, during or even after the marriage with the deceased.

23. While I am aware that the respondent is a beneficiary and entitled to inherit property belonging to his wife, I must also not be oblivious of the following; that he met the deceased with some of these properties; that there are children of the deceased and they have no one to look upon after her demise; that the respondent intended to defraud the said children of everything through the **Succession Cause No. 16 of 2009 at the Senior Principal Magistrates' Court**, Nanyuki, were it not that he was discovered on time; the allegations by the applicant of the respondent's cruelty both to the deceased and her children; that having been a senior Police Officer in the Kenya Police Service, the respondent must be a man of means and/or must be having his own means of survival as opposed to the children of the deceased who have none to look upon to.

24. In view of the foregoing, the justice of the case would demand that these children who include **BM**, who has just reached the age of majority be taken care of. Therefore, the mode of distribution proposed by the applicant commends itself to me with a little variation.

25. Accordingly, I make the following orders: -

a) The grant issued to Michael Murithi Muthaura in the Nanyuki SPM'S Court Succession Cause No. 16 of 2009 is hereby revoked and declared to be of no effect.

b) The grant issued herein on 4th July, 2011 to Anastacia Kendi and Michael Murithi Muthaura, jointly be and is hereby revoked. A fresh grant is hereby issued to Anastacia Kendi and forthwith confirmed and the estate distributed as follows: -

i) Nanyuki/Municipality Block1/120 (Mountex)

BM - whole

ii) Nanyuki/Municipality Block1/121 (Mountex)

Kelvin Kimathi - whole

iii) L.R. Donyo Sabuk/Komarock Block 1/6996

Anastacia Kendi - whole

iv) 1000 Shares with Kenya Airways

Michael Murithi Muthaura

26. In view of the conduct of the respondent and the interested party, they will bear the costs of these proceedings.

DATED and DELIVERED at Meru this 21st day of February, 2019.

A. MABEYA

JUDGE