



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KAKAMEGA

SUCCESSION CAUSE NO. 521 OF 2006

IN THE MATTER OF THE ESTATE OF INGUTIA MURAMBI DECEASED

MARGARET CHSIKA.....PLAINTIFF/PETITIONER

VERSUS

SISIGO INGUTIA MURAMBI (DECEASED)

JULIET INGUTIA.....DEFENDANTS/ADMINISTRATORS

WILFRIDA INGUTIA

JUDGMENT

1. The dispute herein relates to the mode of distribution of the estate of the late Ingutia Murambi who was the registered owner of land parcel South Kabras/Chesero/1505 that measures 1.99Ha.
2. The matter was heard by way of *viva voce* evidence upon consent of the parties that the petitioner's affidavit of proposed mode of distribution filed in court on the 3rd February, 2012 be treated as the plaint and the petitioner be treated as the plaintiff while the summons for confirmation of grant dated 15th march, 2012 by the administrators were to be treated as the defence and the administrators named therein i.e Sisigo Ingutia Murambi, Julieta Ingutia Murambi and Berenetta Ingutia be treated as the defendants.
3. The petitioner/plaintiff called two witnesses in the case, Sofia Alema Ingutia PW1 and Paul Avasha Amanga PW2. The plaintiff herself did not testify in the case. The defendants on the other hand called two witnesses, Julieta M. Wanaswa, DW1 and Kizito Achesa Sisigo DW2.
4. In her affidavit of proposed mode of distribution dated 3/2/2011 and filed in court on 3/2/2012 the petitioner/plaintiff sought to distribute the estate as follows-
 - (a) Paul Avasha Amanga(purchaser) – 2.4 acres
 - (b) Sisigo Ingutia Murambi – 2.575 acres
5. The administrators/defendants on their part proposed that the whole estate devolves to Sisigo Ingutia Murambi.
6. The facts that are not in dispute are that the deceased herein was the father of three sons namely:-
 - (1) Lumumba Ingutia
 - (2) Alfonse Ingutia(Chisika)
 - (3) Sisigo Ingutiaand five daughters namely:-
 - (1) Sofia Alema
 - (2) Benerdeta Nanjala

(3) Leonida Khaveri

(4) Julieta Ingutia

(5) Wilfrida Ingutia

7. All the three sons are now deceased. Lumumba left no offspring. Alfonse Ingutia (Chisika) was the husband to the petitioner herein. Their only son died in 2005. Sisigo Ingutia died while these proceedings were going on but left behind children, one of them Kizito Achesa Sisiko DW2.

8. The case for the petitioner was after the death of Lumumba Ingutia his share of land reverted to her late husband, Chisika Ingutia and Sisiko Ingutia. That after the death of her (petitioner's) son, the family decided to sell Lumumba's share and the share of her late husband, Chisika Ingutia. That they sold 2.4 acres to Paul Avasha Amanga PW2, leaving Sisigo Ingutia with his share of 2.57 acres. Therefore that the land should go to the purchaser, Paul Avasha Amanga and the family of Sisiko Ingutia. This position was supported by Sofia Alema Ingutia PW1 in her evidence in court.

9. Sofia testified that her father, the deceased herein, had divided his land between his three sons. That after the death of Chisika's son, she and the clan elders, Benedetta Nanjala and Leonida Mukhwana agreed to sell part of the land to meet the burial expenses for Chisika's son. However that Wilfrida, Julieta and Sisigo objected to the sale. They all the same sold 2.4 acres to Paul Amanga who entered into the land and lives thereon. That they only sold the shares for Lumumba and Chisiko. That Julieta and Wilfrida do not live on the land. Therefore that 2.4 acres should go to Paul and 2.5 acres to Sisigo.

10. The witness further said that part of the proceeds of sale of the land from Paul was used to buy land for the three daughters of Lumumba.

11. Paul PW2, testified that he paid kshs.216,000/= for the land and moved into the land in the year 2006. He produced sale agreements towards the purchase, PEX 1(a) and (b). He further said that Sisigo wanted him to move out of the land. That Sisiko initially demolished his house. He was charged in court, found guilty and placed on probation for one year.

12. Julieta DW1 testified that the petitioner was married to her brother for three months. She went away when pregnant. That the child was brought to them. That after the death of her brother, the petitioner was married elsewhere. That the petitioner's son died in 2005. That the shamba was sold in 2006. Therefore that it is not true that the shamba was sold to cater for the burial expenses of the petitioner's son. That she is not aware that part of the proceeds of sale was used to buy land for the family.

13. The witness further said that Paul (the purchaser) and the children of Sisigo live on the land. That they did not allow Paul to occupy the land. That she and her sister Wilfrida are objecting to Paul getting 2.4 acres while her other sisters Benedetta and Leonida are in support of it. That the family did not agree for the land to be sold to Paul.

14. Kizito Achesa Sisiko DW2 testified that she is a daughter to Sisigo. That Paul occupied the land by force as her father protested. That her father was arrested and placed in custody. Paul built on the land when her father was in custody.

15. The witness further said that the shamba was sold in 2006. That the petitioner's son died in 2005. That she is no aware that another shamba was bought for the family. That she supports the proposal by DW1. In cross examination, she stated that the family contributed money towards the burial of the petitioner's son. She was not aware that the shamba was sold to pay a debt incurred over the burial of the petitioner's son.

Analysis and determination

The questions for determinations are:-

(1) Whether the purchaser legally bought the land;

(2) Whether the petitioner re-married after the death of her husband; and

(3) How the land should be distributed.

16. The petitioner herein died on 16th July, 1999. The first grant was issued to Sisigo Ingutia Murambi and Margaret Chisika on 25th January, 2007. According to the sale agreements produced by the purchaser, PEX1 (a) and (b), he bought the land on 3rd March, 2006. That means that the purchaser bought the land before a grant of representation was issued in the matter.

17. Section 45(1) of the law of succession Act provides as follows:-

“Except so far as expressly authorized by this Act, or by any other written law, or by a grant of representation under this Act, no person shall for any purpose take possession or dispose of, or otherwise intermeddle with, any free property of a deceased person.”

Section 45(2) of the Act makes it an offence for any person contravening the provisions of section 45(1).

18. The agreements indicate that it is Sofia Alema who sold the land. The said Sofia Alema was not in possession of a grant of letters of

administration when she sold the land to Paul Amanga. Sofia PW1 admitted that Sisigo, Wilfrida and Julieta objected the sale of the land. Paul Amanga admitted that Sisigo had demolished his house that he (the purchaser) had built on the land. It is then not correct for Sofia Alema to say that the family had agreed to sell the land. Sisigo and two of his sisters objected to the sale.

19. The purchaser bought the land from a person who had no grant of letters of administration. It was illegal for Sofia to sell the land. It is clear that he purchaser forcibly occupied the land and misused the law by having Sisigo charged with a criminal offence over the land. The purchaser was no more than an intermeddler in the estate of the deceased. He has no protected rights over the land of the deceased. The sale of the land to him was null and void.

20. Sofia Alema stated that her father had sub-divided his land to his three sons and that there were boundaries. Except her mere assertions to that end, there was no tangible evidence to prove so. The land is still registered in the name of the deceased. The deceased died intestate. Since there is no evidence that the deceased sub-divided the land to his three sons, the land ought to be distributed as intestate property to the surviving beneficiaries of the estate of the deceased.

21. Julieta, DW1 stated in her evidence that the petitioner was married by Chisika for 3 months. That she went away while pregnant. That after giving birth the child was brought to their family. The child died in 2005. That the petitioner got married elsewhere. That she had no authority to file the succession proceedings as she left long time ago when her (Sofia's) parents were alive.

22. Kizito Achesa DW2 on her part stated that the petitioner left their home after the death of her son in 2005. When then did the petitioner leave the home? Is it when she was pregnant or after the death of her son?

23. The two witnesses, Julieta and Kizito, did not adduce sufficient evidence to prove that the petitioner got married elsewhere after the death of her husband. Sisigo himself never denied in his supporting affidavit sworn on 19/11/2008 that the petitioner was a wife to the late Chisika. Julieta similarly did not deny in her affidavit sworn on the same date that the petitioner was a wife to the late Chisika. The allegation that the petitioner got married elsewhere was not proved.

24. Lumumba died without an offspring. His share was not in his name when he died. He therefore could not be included in the distribution since he did not have an offspring. His death meant that the surviving beneficiaries of the estate was the family of Sisigo and the family of Chisika. Sisigo died when these proceedings were going on. He is survived by children including Kizito Achesa DW2. Chisika was survived by a wife, Margaret Chisika, the petitioner herein.

25. The daughters of the deceased herein have no interest in the property of their father. Some of them support the land being shared between the petitioner and the children of Sisigo Angatia while others support the whole land being given to the children of Sisigo Angatia.

26. The Petitioner was a dependent of the deceased when the deceased died. The deceased left her on the land. The fact that the petitioner did not have children with the deceased's son does bar her from inheriting her late husband's share of the estate. I find that the petitioner is entitled to the share of her late husband in the estate of the deceased. The land therefore ought to be shared between the petitioner and the estate of Sisigo Ingutia Murambi.

27. The upshot is that land parcel **No. S. Kabras/Chesero/1505** is to be distributed as follows:-

- 1) Margaret Chisika – 2.4 acres
- 2) The estate of Sisigo Ingutia Murambi - 2.575 acres.

Orders accordingly. Each party to bear its own costs.

Delivered, dated and signed in open court at Kakamega this 19th day of December 2019.

J. N NJAGI

JUDGE

In the presence of:

.....Mr. Mango.....for Petitioner/plaintiff

.....Mr. Mbaka.....for administrators/defendants

Petitioner Present.....

Administrators..... Juliet Present.....

Court Assistant.....Polycap

30 days Right of Appeal