



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

SUCCESSION CAUSE NO. 441 'A' OF 2013

IN THE MATTER OF THE ESTATE OF M M M (DECEASED)

A K M.....PETITIONER

-VS-

H M M.....OBJECTOR

K I.....INTERESTED PARTY

J U D G M E N T

1. **M M M (“the deceased”)** to whom this Succession Cause relate died on 19th June, 2000. On 1st July, 2013, the Chief of Antuambui Location wrote a letter of introduction wherein he introduced the Petitioner as the wife and the Objector as the daughter of the deceased. He also set out the names of the other survivors of the deceased.

2. On 2nd August, 2013, the Petitioner petitioned for letters of administration of the estate intestate and set out the following as the survivors of the deceased:-

- a) A K - widow
- b) J K - daughter (married)
- c) G K - daughter (married)
- d) R K - daughter (student)
- e) K M - son (student)
- f) E K - daughter (student)
- g) J M - son (student)
- h) M K - daughter (student)
- i) H M - daughter (student)
- j) H M - son (minor)

3. On 15th October, 2013, the grant was issued to the Petitioner whereupon she subsequently filed an application for confirmation wherein she proposed to distribute the estate as follows:-

i. LAND PARCEL NUMBER ITHIMA/NTUNENE/[Particulars Withheld]

- 1. A K M 0.02 Ha
- 2. K S. I 0.027 Ha

3. J M 0.02 Ha

4. K M 0.02 Ha

ii. LAND PARCEL NUMBER ITHIMA/ANTUAMBUI/[Particulars Withheld]

1. J K 0.10 Acres

2. G K 0.10 Acres

3. R K 0.10 Acres

4. E K 0.10 Acres

5. M K 0.10 Acres

6. H M 0.10 Acres

7. A K M Balance

4. On 17th November, 2014, the Objector filed an application for the revocation of the grant on the grounds that this Cause had been filed secretly in exclusion of her and that the Petitioner fraudulently included a stranger, I K as a beneficiary.

5. By the consent of the parties, on 17th January, 2018, a fresh grant was issued to the Petitioner and the Objector as co-administrators of the estate.

6. I K, the Interested Party filed an affidavit sworn on 17th June, 2018 wherein he claimed that he acquired part of the estate through purchase. That he entered into an agreement for sale of 0.05 Ha from land parcel no. **ITHIMA/NTUNENE/[Particulars Withheld]** at an agreed consideration of Kshs 470,000/=. That the proceeds from the sale of the land were for the benefit of the children, including the Interested Party, to take them through their education after their house burnt down. He supported this with a Chief's letter dated 22nd August, 2012.

7. The matter was to be canvassed through written submissions but as at the time of writing this ruling, none of the parties had filed any. After carefully considering the affidavits on record and as had been directed by Gikonyo J. on 27th January, 2016, the issue for determination is, distribution **of the estate and the position of the sale of a portion of the estate land to the Interested Party.**

8. Distribution of the estate of a deceased person is usually undertaken among his beneficiaries/dependants. **Section 29 of the Law of Succession Act** defines who a dependant of the estate is. It does not include a purchaser from the estate, of which the Interested Party is.

9. The Interested Party told the court that he had purchased a portion measuring 0.05 acres from **Ithima/Ntunene/[Particulars Withheld]** for Kshs. 470,000/- which sum he had completed paying the petitioner. He produced evidence in support of his claim. The sale agreement was executed on 30th May, 2013 by the petitioner.

10. From the record, the Petitioner obtained grant of letters of administration on 15th October, 2013. The sale of 0.05 acres to the Interested Party was therefore undertaken before the Petitioner obtained the grant of letters of administration or any grant authorizing her to do so.

11. In the *Estate of John Musambayi Katumanga (Deceased) [2015] eKLR*– the court held that:-

“The issue for determination by this court is whether the respondent held title in respect of the suit parcel of land as a life interest or an absolute proprietor. It is common ground that all of the children of the deceased consented to the respondent to petition the court to be issued with a grant of letters of administration intestate. That is as it should be this is because Section 66(a) of the Law of Succession Act gives first priority to a widow or widower to petition the court to administer the estate of his or her deceased spouse. However, it appears that the Respondent misapprehended her registration on transmission in regard to the ownership of suit parcel of land. Section 35(1) (b) of the Law of Succession Act is clear. A surviving spouse of a deceased person is entitled to a life interest in the whole of the residue of the intestate estate of a deceased. Such spouse is entitled as of right to the absolute ownership of the personal and household effects of the deceased. In the present application, it was clear that the respondent was only entitled to a life interest in the suit parcel of land. She lacked legal capacity to transfer the suit parcel of land either in whole or in part to third parties without the say so of the children of the deceased. On the other hand, Section 38 of the Law of Succession Act allows a property which is transferred to the children of a deceased person to be owned by the said children absolutely. In the premise, therefore, the court holds that the respondent lacked legal capacity to transfer any portion of the suit parcel of land to a third party without the consent of the children of the deceased. This is because the respondent's interest in the suit parcel of land is life interest. She had no capacity to sell the property which the law allows her to enjoy during her life time. She is in effect a trustee for the children of the deceased.”

12. Although the court was considering a sale after a grant had been issued, it still found that the widow did not have capacity to sell any part of the estate. In the present case, the petitioner, a widow of the deceased, purported to sell the estate property even before she obtained the legal capacity to deal with it. Accordingly, that agreement is of no effect as far as the estate is concerned. In any event, whilst the agreement

was for 0.05 acres, an area of 0.27 ha has been proposed to be distributed to the Interested Party in the proposed distribution. That won't do.

13. I have looked at the Objector's proposed mode of distribution in her affidavit sworn on 12th March, 2018. Earlier on in her affidavit sworn on 6th June, 2016, she had proposed that the portion distributed to the Interested Party be distributed to the daughters of the deceased. This was also supported by E K in her affidavit of 20th March, 2017.

14. I note that the deceased had six daughters and three sons. Parcel No. **Ithima/Ntunene/[Particulars Withheld]** is said to be the only valuable asset of the estate. In the words of the Objector, the other property of the estate, **Ithima/Antuambui/[Particulars Withheld]** is worthless. Considering that **sections 35 and 38 of the Law of Succession Act, Cap 160 of the Laws of Kenya**, presuppose equality, the estate will be distributed as follows:-

Land Parcel Number Ithima/Ntunene/1544

- a) A K M - 0.02 Ha (To be held jointly with H M)
- b) H M
- c) G K
- c) J K
- d) R K
- e) E K
- f) M K - 0.027 Ha
- g) J M - 0.02 Ha
- h) K M - 0.02 Ha

Land Parcel Number Ithima/Antuambui/4653

- 1. A K M - 0.296 Acres
- 2. J K - 0.296 Acres
- 3. G K - 0.296 Acres
- 4. R K - 0.296 Acres
- 5. E K - 0.296 Acres
- 6. M K - 0.296 Acres
- 7. H M - 0.296 Acres
- 8. K M - 0.296 Acres
- 9. J M - 0.296 Acres
- 10. A K M - 0.296 Acres - Balance (To be held jointly with H M)

15. The Interested Party may recover from the petitioner whatever he paid to her in the normal manner in the proper forum, the civil courts.

16. This being a family matter, I will make no orders as to costs.

It is so decreed.

DATED and DELIVERED at Meru this 26th day of September, 2018.

A. MABEYA

JUDGE