



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KAKAMEGA

SUCCESSION CAUSE 417 OF 2011

IN THE MATTER OF ESTATE OF ISAAC NDEGA ESHIKOKHO alias NDENGA – DECEASED

AND

ANJELINE M. ANDENGA.....PETITIONER

VERSUS

ESUNGA AKUTOYI ANDENGA.....PROTESTOR/OBJECTOR

J U D G M E N T

1. This succession cause relates to the estate of the late **Isaac Ndenga Eshikokho** (herein referred to as the deceased). The deceased died on the 22nd May, 2000 and left behind land parcel No. Kisa/Eshibinga/1180. He was survived by a widow, the petitioner herein and a son, the objector herein. He was also survived by his children with the petitioner who are enumerated in the affidavit in support of summons for confirmation of grant.

2. The petitioner has filed an undated application that was filed in court on the 1st July, 2015 seeking that the grant of letters of administration made to her on the 20th December, 2013 be confirmed. The application is supported by her affidavit, also undated. Her proposed made of distribution as contained in paragraph 5 of her supporting affidavit is that land parcel No. Kisa/Eshibinga/1180 be distributed to her and her children/ beneficiaries as follows:-

Duncan Eshikokho – 1.0 acres

Vincent Andenga - 1.0 acres

Edith Amisi - 0.5 acres

Anna Ayieta - 0.5 acres

Philip Andenga - 1.0 acres

Benard Angila - 1.0 acres

(The petitioner to have life interest in the portion of land given to her son Vincent Andenga).

3. Before the grant of letters of administration was confirmed on the 20th December, 2013, the objector had filed an objection dated 13th July, 2012 stating that:

- a. The objector is a beneficiary and a rightful heir of the deceased's father estate i.e L.P. No. Kisa/Eshibinga/1180.
- b. The objector is the 1st born son to the deceased and was intentionally/ deliberately omitted in this cause.
- c. The objector shall be rendered land less if the petitioner herein is granted the grant of letters of administration.
- d. The objector herein ought to have been included in this cause as a beneficiary.

4. The objection was supported by the objector's affidavit on proposed mode of sharing of the said parcel of land sworn on 11th November, 2016.

5. The objector is not in his objection seeking for the revocation of the grant issued to the petitioner. His interest is that he ought to have been included as a beneficiary to the estate of the deceased. The court will thereby treat the "objection" as a protest as the issue at hand is the distribution of land parcel No. Kisa/Eshibanga/1180.

6. Both the petitioner and the protestor gave evidence in court. The protestor was deemed as the plaintiff while the petitioner was deemed as the defendant. They did not call witnesses in the case.

7. It was the evidence of the protestor that he is a son to the deceased herein. That the deceased had 3 wives. That the first wife died without children. His mother was the second wife but that she left him at the home of the deceased and got married elsewhere.

8. That when he reached the age to marry, his father and his grandfather, Shikokho Nabule, instructed him to build a home on land parcel No. Kisa/Shibinga/1164 that belonged to his grandfather (now deceased). He built a home on the said parcel of land. The arrangement was that he, the protestor, was to inherit land parcel No. Kisa/Shibinga/1164 while the petitioner and her children was to inherit the deceased's land parcel No. Kisa/Shibinga/1180. That he, the protestor is occupying the land of his grandfather while the petitioner occupies the parcel of land registered in the name of her husband, the deceased herein. However that when the petitioner filed this succession cause she did not involve him. When he learnt about it, he filed the objection. He proposed in his affidavit of proposed sharing of the land that the land be shared as follows:

(1). House of Anjeline M. Andanja(the petitioner) – 3.1 acres

(2). House of Phelista (Protestor's mother) – 2.0 acres

9. The petitioner on her part testified that when she was married by the deceased, the deceased did not have a wife living at his home. The deceased however told her that he had a son who would be brought back. That the son, the protestor, was brought to their home by his mother but she left with him. The protestor returned to their home when he was married. The deceased gave him land parcel No. Kisa/Shibinga/1164 measuring approximately 2 acres. The protestor developed the said parcel of land and resides there with his family. The petitioner was given land parcel No. Kisa/Shibinga/1180 where she lives with her children. She contends that it is she and her children who are entitled to land parcel Kisa/Shibinga/1180 and that the protestor has no claim over the said parcel of land as he has his own land given to him by the deceased during the life time of the deceased.

10. During the hearing the petitioner produced a copy of a green card for land parcel No. Kisa/Shibinga/1164 that indicates that the land is registered in the name of Shikokho Nabule. She also produced a copy of an official search that indicates that land parcel No. Kisa/Shibinga/1180 is registered in the name of Ndenga Eshikokho, the deceased. The former parcel of land measures 0.81 Ha while the latter measures 5.1 acres.

11. The petitioner also produced photographs showing the homestead of the protestor on land parcel No. Kisa/Shibinga/1164.

Determination

12. The protestor has admitted that his father and his grandfather settled him on land parcel No. Kisa/ Shibinga/1164 on the understanding that he will inherit the said parcel of land while the petitioner and her children were to inherit land parcel No. Kisa/Shibinga/1180. The protestor has been living on land parcel No. 1164 since the time when he was settled there by his father and grandfather. The petitioner on the other hand has been in exclusive possession of land parcel No. Kisa/Shibinga/1180. The protestor has not explained why he now wants to go against the arrangement made between him on the one hand, and his father and grandfather on the other hand. Land Parcel Kisa/Shibinga/1164 that was given to the protestor by his father was meant to be his father's inheritance from his father, Shikokho Nabule . The protestor's right to the said parcel of land was only through his father. He then cannot argue that he has not inherited anything from his father. The issue of sharing the property through houses therefore does not arise as the deceased had settled the parties in their respective parcel of land before he died.

13. The protestor is set to inherit about 2 acres of land parcel No. 1164 while the petitioner will inherit 5.1 acres of land parcel No.1180 to be shared out to her children and her beneficiaries. In her proposed mode of distribution, none of her beneficiaries is getting anything more than one acre. It is then apparent that the protestor is the one who had benefited more from the estate of the deceased and that of the deceased's father. It is clear that the protestor has refused to file a succession cause on the estate of his grandfather so as to get an excuse to make a claim on the estate of his father despite having been given land by his father from the estate of the deceased's father . The protestor should be satisfied with what was given to him by his father and grandfather.

14. In the foregoing, the protestor has no entitlement to land parcel No. Kisa/ Shibinga/1180. The objection by the protestor dated 13th July, 2012 and his proposed mode of distribution is rejected and dismissed. Land parcel No. **Kisa/Shibinga/1180** is to transmit to the petitioner, **Angelina M. Andenga** and her children and/or beneficiaries. The summons for confirmation of grant filed in court by the petitioner on the 1st July, 2015 are accordingly confirmed in terms of paragraph 5 of her supporting affidavit.

Orders accordingly. Each party to bear its own costs.

Delivered, dated and signed in open court at Kakamega this 25th day of October, 2018

J. NJAGI

JUDGE

In the presence of:

No appearance.....for petitioner

George.....Court Assistant

Parties:

Petitioner.....present

Protestor.....present

30 days Right of Appeal