



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

SUCCESSION CAUSE NO. 159 OF 1997

IN THE MATTER OF THE ESTATE OF KAUMBUTHU M'MBUGAUGIA (DECEASED)

KABURU MBUGAUGIA.....PETITIONER

VERSUS

CIAMATI KAUMBUTHU.....OBJECTOR

PIUS MIRITI & 3 OTHERS.....INTERESTED PARTIES

RULING

This cause relates to the intestate estate of the late Kaumbuthu M'Mbugaugia who died on 26th May 1993 domiciled at Muthambi Sublocation.

According Assistant chiefs letter dated 15.2.1997 the deceased was registered as proprietor of L.r. No. Muthambi/Igamurathi/96 in trust for himself and in trust for himself and in trust of his brother Kaburu Mbugaugia who was seeking to petition for Letters of Administration so as to get his portion registered in his name. the land measures 1.60 ha. Temporary Grant of Letters of Administration was made to Kaburu Mbugaugia on 2nd December 1997. The grant was confirmed on 13th March 1998 by the Deputy Registrar and a certificate was issued distributing L.R. No. 96 to:-

- Kaburu 2.542 Acres
- Pius Miriti 1.00 acre
- Alex Njagi 0.06 acre
- Nebert Njagi 0.05 acres
- John Peter Njagi 0.125 acres
- Cyprian Njagi 0.125 acres
- Gilbert Miriti 0.05 acres

Ciamati Kaumbuthu applied for revocation of grant of Letters of Administration made to Kaburu Mbugaugia on account she was the only wife of the deceased and that her and her 6 children were not aware Kaburu had petitioned for Letters of Administration to her husbands estate. She said she was served with Notice to vacate the land and that is when she learnt Letters of Administration had been obtained fraudulently.

She said the deceased persons estate had been subdivided and none of the heirs had been given any land which had been sold to 3rd parties. Kaburu Mbugaugia in Replying Affidavit sworn on 5th February 1999 said the deceased was never married and it was a lie that the applicant was his wife. He said that the applicants 6 children were sired by various men the applicant had cohabited with and not the deceased. It was also averred that the applicant had never lived on L.R. No. Muthambi/Igamurathi/96 and is not entitled and has no interest on the suit land.

The applicant said she was married to the deceased under customary law but she could not remember the year and that she had 5 children with the deceased and the 6th child was born by the deceased out of wedlock and she brought him up.

She denied having been married thrice. She said when she got married to the deceased she settled on land in dispute with her husband, her mother in law and the petitioner herein. She said her sister in law BelinaIgoki was already married by the time she got married and settled with deceased on suit land.

She said she got married to the deceased after he had been released from detention where he was in custody for 7 years. She said she didn't know David Ndeke and is not married to him. She said that she was living on disputed land when petitioner filed petition secretly. She said the petitioner was given land by his father and he sold it. She said KanugulChachari and others who were involved in her marriage with the deceased have already died. She said she had never visited BelinaIgoki her sister-in law. She said it was Kaburu who negotiated dowry when her husband went to her parents home. She said the chief gave her letter and she called elders for whom she slaughtered 2 goats but they were not able to resolve the dispute between her and Kaburu. She said one of the elders brought her to court and not a councilor. She said Assistant Chief Mbae gave her the letter she used to nullify the grant.

She said she got her 1st born son after she got married to the deceased and it was not true that the deceased was incapable of bearing children. She said she could not remember when her children were born. She said her daughters were married but it was not true that David Ndeke received dowry for her daughters. She said land in question was bought by the deceased.

She said Kaburu sold land to 3rd parties and her houses were demolished and she reported to Ntonini Police Station. She admitted knowing David Ndeke but said she was not staying with him. She said the Ndeke she knew was son of Munyi who lives on her fathers land.

Applicant produced her identity card in court but there was objection to production and it was marked. She produced KANU membership for her husband MF1P2. produced clinic cards for her children Kathambi and Mugo – EXP5(a) 8(b). she also produced sacrament card for Brigid – Ex P5(c).

Applicants witness Mwihandi John – testified that he knew the deceased. He said the deceased persons son known as Mugo went to call him when Kaburu wanted to evict them and a clan meeting was held to establish ownership of the land and it was decided that the land should go to Ciamati the applicant and that Kaburu could file objection. He said that during the clan meeting Kaburu didn't disclose there was a case in court. He admitted he came from different village, different sublocation and different location from the applicant and petitioner.

He said Mugo called him and a meeting was held in 1996 and was chaired by Jonathan Kangori while Secretary was Njagi. He said Ciamati was not at the meeting that held that she should inherit the land. He said that Kaburu said his brother was not married and had no children. He said he didn't know when the deceased married Ciamati. He said the applicant had one house on suit land and was staying on that same house with the son known as Mugo as he was still small. He said the land was given to the deceased by his father but not purchase.

He said it was not true that Mugo Ntaari sired Ciamatis 1st 2 children. He said he knew the deceased in 1954 when he was released from detention. He said he knew no one by the name David Ndeke and there is no one by the name Ndeke Munyi in their area. He said that Ciamati was chased from matrimonial home and stays with the mother. He said he didn't know husbands to Ciamatis daughters and he had not participated in their marriage. He said he didn't know when the 1st child between Ciamati and the deceased was born. He said that Kaburu and his nephew stay on parcel of land whereas Ciamati and her children were chased away.

PW3 Brigid Kajira alias Brigid Kagira testified that the deceased was her father and Ciamati her mother. She said she got married in 1990 before her father died but her husband had not paid dowry. She said after her fathers death in 1993 her uncle kaburu took her fathers land and started harassing her mother and as a result her younger sister disappeared and her mother looked for alternative place to stay after her house was demolished. She said her father and her mothers names appear in her baptismal card. She said her baptism card was obtained by her mother from the parish and she didn't know the person who wrote on it. She said she didn't know Mugo Ntaari. She said she grew up knowing the deceased and Ciamati were her parents. She denied that Mugo Ntaari paid her fees. She said her father had one big house for himself and there was another house for his adopted son called Nyaga. She said that her parents, her uncle Kaburu, her aunt Mukwa-Mugo and Nyaga were staying were staying on the suit land and after the deceased died Kaburu took the cows, land, fork jembes and pangas. She said even her grandmother had houses on suit land. She said kaburu had never lived on any other land. She said she had not attended any clan meeting. She said Ciamati stays with her brother Mucheke Mutegi. She said she didn't know David Ndeke and didn't also know Ndeke Munyi.

PW4 Jacinta Kangai also said that deceased was her father and Ciamati was her mother. She said she was married. She said after her father died Kaburu started harassing her mother and thereafter demolished her house and chased her away. She denied that David Ndeke was her father. She said she didn't know David Ndeke. She said she was baptised at Chuka Catholic church. She said she grew up on the suit land. She said Nyaga, her parents and Kaburu and his family stayed on suit land. She said her father had built a main house and kitchen on suit land.

PW5 Robert Mugo said, when the deceased died he was in nursery school. He said his mother was Ciamati and Kaburu was his uncle. He said when the deceased died Kaburu took possession of his fathers land and he reported to the clan and they were advised to take the matter to court. He denied that he came from David Ndeke's house as he didn't know him. He said he lives in Muthambi and was not a son of David Ndeke. He said he had always lived on disputed land. He said Kaburu also stays on disputed land. On 10.3.2010 the trial Judge Kasango ruled that since the late Justice W. K. Tuiyot had determined in a ruling dated 2.9.2001 that Ciamati was the only wife of the deceased and that determination had not been preferred to appeal she was appointed to be the administrator. She was therefore directed to file application for confirmation immediately.

Application dated 23.3.2010 for confirmation was filed and a protest also filed by Kaburu, Mr. Gitonga for petitioner also filed an application dated 30th October 2010 seeking to review orders of 6.7.2010 which marked hearing as closed and directed parties to file submissions. He sought that petitioner be allowed to tender viva voce evidence in support of affidavits on record. The application to allow petitioner present viva voce evidence was allowed Kaburu testified and send Ciamati was a daughter to his mothers brother and could not have been married to the deceased and in any case the deceased who lived with him in his house told him he had been castrated while in detention and was incapable of bearing children.

The petitioner/protester said Ciamati was 1st married to Mugo Ntaari and had 3 children namely:-

- Kajira
- Kangai
- And a son who died.

He said Ciamatis matrimonial home was in Kauwa which is 40 KM away. That when Mugo Ntari died Ciamati got Married to David Ndeke and lived at Karimba sublocation and that they had 3 children namely:-

- Gikundi
- Gathareri
- Mugo

He said that Fidesio Nyaga M'Miriti is son to Njeru Karimu and not the deceased and the mother is Ukuna and not Ciamati. He said that Ciamati is being fronted by Catherine Muthomi Riungu to disinherit him. He said the deceased didn't sell land to Catherine. He said the land originally belonged to his father and if deceased had a family he would have shared the land with them.

Kaburu Mbugaugia said that he didn't have ID card by the time land was registered in his deceased brothers name. he said he was 19 years and ID cards were being issued at 21 years.

Kaburu admitted having sold land to 3rd parties. He said the cards produced by Ciamati were obtained by Catherine from the hospital. Petitioner said Mukomugo is his sister and Ciamati is his uncles daughter. He said he didn't know Cyprian M'Aririm.

Berina Igoki – PW2 said that she was sister to the deceased and that they were 4 siblings, 2 sisters and 2 brothers. She said the land in Muthambi belonged to her father and it was given to the deceased and Mukoamugo. That when her and her sister got married they left the deceased and Kaburu occupying the land. She said the deceased was never married because he was castrated while in prison for 7 years. She said Ciamati is like her sister and was never married to her deceased brother. She said his mother and Ciamatis father are sister and brother. She said Ciamati was married to Mugo Ntaari and they had 3 children but one passed on. She said Ciamati and Mugo lived in Kanuwa. She said Ciamati to later got married to Ndeke and had 3 children. She said there is no time Ciamati and her children lived on deceased persons land. She said it is Catherine who is behind Ciamatis claim for deceased persons land. She said it is Kaburu who should inherit land because her sister Cecilia Mukoamugo had land in Munga area hich was bought for her by the father. She said the deceased went to prison before he got married and when he came back from prison, he continued staying on suit land.

She said Nyaga was son of M'Arimi and not the deceased and his mother is Karimi and not Ciamati. She said suit land was for Kaburu and Kaumbuthu. She said her father gave Celia Mukoamugo land in Munga area. She said she was not making any claim over the land as her father left a will. She said Ciamati could not be married to Kaumbuthu because she is daughter to their uncle.

PW3 Protus Mutegi – Senior chief of Muthambi location said that he knew the deceased whose land was next to chief camp. He said the deceased didn't stay with anyone else. He said the deceased was never married and no one claimed to be his wife during his tenure as chief. He said he knew Ciamati as wife of Ndeke and resided in Mutheri Location. He said Ndeke was a blind man and Ciamati used to collect relief food on that account. He said that he didn't know the children of Ciamati and Ndeke as they lived Ndumberi sublocation. PW3 also said the deceased was castrated while in prison and didn't marry and that Ciamati and deceased were cousins. He said Ciamati has her husbands land and should not claim from estate herein.

He said he didn't know Protasio as brother to the deceased. He said the letter dated 18.10.1999 by Assistant Geoffrey Njue Thaibo and letter dated 25.1.1999 by District Officer indicated Ciamati was wife to Kaumbuthu but Assistant Chief Geoffrey Njue by a letter dated 11.4.2011 gives the right identity of beneficiaries to the estate. Celia Mukoamugo filed a protest to mode of distriubtion filed by Ciamati. She said the deceased was his eldest brother and Kaburu was the youngest. She said Ciamati is her cousin and didn't get married to the deceased. She said the deceased had no children. She said Kaburu petitioned for grant of Letters of Administration without her knowledge and she placed a caution on the land. She said she was never married. She said her father never gave her money to bu land. She said she is the one who footed all expenses for the funeral.

She said the children of Ciamati are not her brothers. She said that deceased was castrated while in prison and even his 2nd wife didn't have children. She said land was registered in the deceased name at the instance of her mother Saberia. She said her land on suit land was demolished by Kaburu. She said she didn't know Cyprian Mutegi and Sabina Mukuamugo as she didn't know her father had any other children.

Retired Chief Geoffrey Njue came to court to say that he was influenced by a farmer councillor to write a letter identifying Ciamati as the wife of the deceased but later he discovered the information was not true and wrote another letter to confirm he had been misled. He said he wrote the letter when he was acting for the area chief who was sick. He said he conducted investigations and established that. Ciamati was married to David Ndeke who is alive and the 2nd husband is deceased. He said the Councillor Catherine Muthomi who introduced Ciamati to him was interested in the land in question. He said Celia Mukoamugo was separated from her husband and was living on suit land. The issue in dispute herein is whether Ciamati the applicant herein is entitled to a share of the estate of the deceased. Although the grant made to Kaburu was revoked on account that Ciamati was the only wife of the deceased and therefore the rightful beneficiary together with her children. Overwhelming evidence has been adduced and same has not been controverted that she got married to 2 men and had 2 different

sets of children from 2 husbands the 1st husband having died, secondly, there is also overwhelming evidence that Ciamati is a daughter of deceased persons uncle, a brother to deceased persons mother and could not under any circumstances get married to the deceased who is a 1st cousin. The petitioner herein Kaburu and his 2 sisters Celia Mukoamugo and Berina Igoki attested to that fact.

Protus Mutegi Senior Chief Mthambi also disowned claims that Ciamati was wife to the deceased. He said his office is next to the suit land and he knew for a fact that the deceased didn't get married. He said the chief who wrote letter identifying Ciamati as wife of deceased was acting on behalf while he was sick when the letter was written.

Former Chief Geoffrey njue testified and said he was misled by former Counsellor Catherine Muthomi who introduced Ciamati as deceased persons wife and when he discovered he had been misled he wrote another letter withdrawing the earlier one with the evidence adduced by the petitioner herein Kaburu Mbugaugia, Celia Mukoamugo, Berina Igoki, Geoffrey Njue and Protus Mutegi, this court finds that claims by Ciamati as a wife to the deceased can't stand for reason she is 1st Cousin to the deceased and can't possibly have married her. Secondly the 2 sisters of the deceased as well as Kaburu testified that the deceased while in detention for 7 years in Manyani was castrated and didn't sire/bear any children. Celia said he had 2 wives who didn't bear children.

The evidence of those witnesses has convinced the court and it is the finding of this court that Ciamati's claim as a wife can't stand. The paternity of her children and even other alleged claimants were refuted and she didn't controvert the same. The claim by Ciamati is dismissed. This estate remains to be shared between Kaburu and Celia Mukoamugo as it was land that originated from their father. The same should be shared equally between them. There are no orders as to costs.

HON. A. ONG'INJO

JUDGE

RULING DELIVERED, DATED AND SIGNED IN COURT ON

THIS 29TH DAY OF NOVEMBER 2018.

29.11.2018

Before Adwera Ong'injo J

Kinoti – Ct Assistant.

Mr. Kaimenyi Advocate for protester.

Mr. Abubakar Advocate for 5th Interested party.

Mr. Ngugi holding brief for Rimita for 1st to 4th Interested party.

Ms Wambugu Advocate for Objector

Petitioner – Present in person.

Order

Copies of ruling to be supplied to parties upon payment of copying charges.

HON. A. ONG'INJO

JUDGE