



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

CIVIL APPEAL NO. 12 OF 2018

CECILIA KARIMI MWANGI.....APPELLANT

VS

PAULINE MWONJIRU MAINGI.....1ST RESPONDENT

JOYCE MURITHI MAINGI.....2ND RESPONDENT

JUDGMENT

This is an appeal against the decision in Maua CMC Succession Cause No. 10 of 2012 delivered on 30th January 2018 where the trial magistrate Hon. Wanganga RM after finding that the 2 widows of the deceased are discriminating their children on gender basis were allowed and approved the proposal for distribution by the 2 widows which gave their sons L.R. Kangeta/Kangeta/1248 measuring 0.20 Ha whereas the daughters of the deceased were given L.R. Njia cia Mwendwa/3021 and 3037 which according to applicant one located in remote areas as opposed to property in Kangeta which is of high value and the deceased had already developed it.

From the evidence of Joyce Murithi Maingi in the trial court it appears she has preference to a stranger one Geoffrey Maore whom she claims will inherit because he took care of them.

On 14.3.2016 objection proceeds were settled by the court issuing orders of inhabitation against the 3 suit properties and appointing deceased persons widows as Administrators.

On 17.7.2017 Cecilia Karimi, Pauline Mwonjiru and Joyce Murithi and Geoffrey Maore proceeded with testimonies as if the objection proceedings were still going on in the trial magistrate discovered that summons for confirmation was not on record on 1/12/2017.

On 17/7/2017 the trial court ordered for District Land Registrar to provide details of ownership of L.R Kangeta Adjudication Section 1248.

Earlier on 24th June 2014 the court had also made orders for the petitioner to avail valuation reports to the 2 parcels of land before the court could make further orders.

The Report by District Land Registrar Meru North dated 4/8/2017 was to the effect Parcel No. Kangeta/Kangeta/1248 measuring 0.20 Ha had no dealings since 27th November 2010 where court order was issued. Certificate of official search dated 27th June 2017 however shows that Geoffrey Maore was issued with title to L.R. Kangeta/Kangeta/8805.

On 3/11/2014 which was excused from L.R 1248.

Cecilia Karimi also claimed that her father had given her a shop at the Kangeta property but there were no witness to the allegation in same way there was no witness to the allegation that Kangeta property was given by the deceased to the sons and widows.

I have looked through the proceedings in the lower court and it appears that since Ruling on distribution was delivered on 22/1/2018 and no witnesses appointed on 14/3/2016 Grant had never been issued and certificate of confirmation were never issued. Stay orders were granted on 3/2/2018 for 14 days and appeal was filed on 19/2/2018.

Proposals by the widows was that the Kangeta property had been given to deceased by the deceased and the Njia cia Mwendwa property had been given by the deceased to his daughters.

There was no evidence either oral or written will was left by the deceased.

Joyce Murithi actually admits the property at Kangeta had more value than the property at Njia cia Mwendwa.

It was also not established when Kangeta/Kangeta/8805 was registered in the name of Geoffrey Maore but from objection evidence he bought 0.30 acres later. The widows added to him 0.20 acres.

The deceased had 16 children 6 sons and 10 daughters. Out of which one son and 2 daughters were indicated in the Chief's letter as deceased Geoffrey Maore who is also indicated as son the deceased turned out not to be a son but was claimed to have taken care of the deceased and that is why Joyce Murithi on her testimony said he was entitled to inherit 0.50 points (acres).

In the summons for confirmation the widows still awarded him 0.60 acres. Consent to petition is signed by deceased person's sons only.

Consent to confirmation and distribution dated 7th November 2016 is purported to have been signed by Anthony Mwangela Maingi, Joseph Koome, Christopher Mwenda, David Muthaura, Richard Kangangi, Karimi Alfunzi, Gladys Alfunzi, Kawira Alfunzi, Jane Alfunzi, Geoffrey Maore M'Thuranira.

Pauline Mwonjiru

Deceased had 2 homes, Karimi is being given 0.10 acres in a dry area Rwanda. Kangeta land is for deceased sons. Objector was not given any land/house by her father. No will. We have subdivided the land the best we can.

Joyce Murithi – Kangeta property is more valuable. What portions of Kangeta property had the sons occupied? Where did Geoffrey get 0.50 acres to occupy if the sons had occupied entire property? Joyce Murithi does not deny she occupies what was alleged by Cecilia to belong to her.

In consideration the trial magistrate said that the widows of the deceased are discriminating their children based on gender and that the daughters and sons are equal before the law, it was contradictory and erroneous for the trial court to go ahead and find that sons and widows are already in occupation of Kangeta property when there is no such evidence on record. The decision can't be termed as general agreement because it is a decision taken by the widows without consent of the protesters herein and her sisters. No will, either oral or written was left behind by the deceased.

The court will order that L.L.R. Kangeta/Kangeta/1248 of the buildings at Kangeta property will be shared by the daughters of the deceased in addition to the 0.10 acres allocated to them in the 2 properties in Njia-Cia-Mwendwa 3021 and 3037.

Njia-Cia-Mwendwa No. 3021 (0.53 Ha)

Pauline Mwonjiru

Joyce Murithi Maingi

Anthony Mwangela Maingi

Kanini Alfunzi

Flora Alfunzi

Joseph Koome Maingi

Christopher Mwenda

David Muthara

Richard Kaungangi

Karimi Alfunzi

Mariam Alfunzi

Gladys Alfunzi

Flora Alfunzi

Kawira Alfunzi

Kananu Alfunzi

Jane Alfunzi.....To share equally

Njia-Cia-Mwendwa No. 3037

Pauline Mwonjiru

Joyce Murithi Maingi

Anthony Mwongela Maingi

Kanini Alfunzi

Flora Alfunzi

Joseph Koome Maingi

Christopher Mwenda

David Muthara

Richard Kaungangi

Karimi Alfunzi

Mariam Alfunzi

Gladys Alfunzi

Flora Alfunzi

Kawira Alfunzi

Kananu Alfunzi

Jane AlfunziTo share equally

Kangeta/Kangeta/1248 0.20 Ha

Each house to get 2 houses - ½ shares

Residue to be shared in common - ½ shares

HON. A.ONG'INJO

JUDGE

JUDGMENT SIGNED, DELIVERED AND DATED THIS 22ND DAY OF NOVEMBER 2018.

In the presence:

C/A:- Kinoti

MS Atieno Advocate for Appellant

M/S Mutembei and Kimathi Advocate for Respondent

MS Atieno

On 1.3.2018 orders of inhibition were issued against parcels No. Kangeta/1248, Njia-Cia Mwendwa/3021 and 3037.

I pray that those orders be lifted to enable transmission of estate.

Order

Application to lift order of inhibition allowed.

HON. A.ONG'INJO

JUDGE