



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

SUCC CAUSE NO. 279 OF 2013

IN THE MATTER OF ESTATE OF MUKINDIA MWIREBUA - DCD

JOHN NTEERE M'MWARANIA.....PETITIONER

VS

SUSAN MARETE.....OBJECTOR

RULING

This cause relates to the intestate estate of the deceased Mukindia Mwirebua who died on 1st day of August 2008 while domiciled at Ntakira. He was survived by:

- 1) Z K – Widow
- 2) John Nteere – Son
- 3) Francis Kimathi – Son
- 4) Susan Marete – Daughter
- 5) Sabella Gacheri – Daughter
- 6) Tabitha Kathure – Daughter
- 7) Simon Murithi – Son
- 8) Purity Makandi – Daughter

The assets forming the estate are listed at:

- 1) Ntima/Ntakira/4040
- 2) Ntima/Ntakira/4041
- 3) Ntima/Ntakira/4042
- 4) Ntima/Ntakira/4043
- 5) Ntima/Ntakira/4044
- 6) Ntima/Ntakira/4045
- 7) Ntima/Ntakira/4046
- 8) Ntima/Ntakira/4047

John Nteere M'Mwarania the deceased person's son was appointed Administrator of the estate on 28th August 2013.

When he applied for confirmation by an application dated 12th June 2014, it appears only Sabella Gacheri, Simon Murithi and Purity Makandi signed consent.

In his proposal for distribution he gave himself L.R. 4048 and 4042, Francis Kimathi 4040, 4044, Simon Murithi 4041 and 4047. Purity Makandi 4043.

L.R 4045 to Nehema Christian Pentecost Evangelistic Revival Ministry. L.R 4046 to Sabella Gacheri and Jonah Kirimi, Susan Marete, Z K (widow) and Tabitha Kathure were not provided for.

Susan Marete the deceased persons daughter filed affidavit of protest and claimed that she was the only child of her mother Z K who was the 1st wife and who is now of unsound mind and not able to fend for herself.

She said prior to deceased persons death, he made a will on how the estate was to be shared by sub-dividing on the ground and each beneficiary shown their portion.

She said her mother was shown one acre which portion is distinctly deponed on the ground today.

She said her mother and herself had been omitted from the distribution by the petitioner. She argued that estate be distributed according to the will.

The petitioner John Nteere in reply to affidavit of Susan Marete admitted that the protestor was his elder sister but that she went with her mother to live with her uncle until when she got married. He admitted in the affidavit that the deceased made a will which he later revoked by his own actions.

He said that he petitioned for Letter of Administration as per division of the estate on the ground. He averred that on 31/7/2007 the deceased subdivided his land and that he gave a piece of land to Nehema Christian church prior to his demise.

He said the chief of the area was present when, the deceased changed his mind as to distribution of his estate contrary to the will. Petitioner admitted that deceased had showed L.R.NTIMA/IGOKI/483 to his beneficiaries but that the widow was not shown any portion as the deceased didn't intend to give protestor's mother any land.

The petitioner prayed that the court treats the deceased persons will as overtaken by events.

Protestor when giving evidence in court the church on suit land belongs to Petitioner John Nteere. She urged the court to look at what was said at the chief's office. She said she claimed one acre according to the fathers will which gave her mother one acre. She said the land belonging to her mother was being used by John the petitioner. She said the land is under coffee trees and boundaries were established.

The petitioner said he is a pastor with church which is located on the suit land. He admitted that there was no document to prove the deceased persons well was charged. He admitted that documents used to process mutation of the suit land were not in court.

He admitted he didn't provide for protestor and her mother in the distribution of the estate. He admitted that it was agreed at chief's meeting that protestors mother gets once acre. He claimed that one acre of land that remained for the deceased was given to Purity Makandi. Petitioner claimed land on the ground was small by one acre but didn't give name of surveyor who established that.

He confirmed that in his distribution he was getting 2 parcels of the land as well as Francis and Simeon. He said land given to Purity was provided for in the will because she took care of the deceased. He said Sabella Gacheri is daughter to deceased and Jonah Kirimi is her son and they are provided for jointly.

Petitioner admitted that estate was not transferred by the deceased to any of the beneficiaries. Petitioner admitted that he was chairman of Nehema Christian Pentecostal Evangelical Revival Ministry which has constituted a church on suit land. He claimed that the deceased gave land to the children in the presence of chief in 2004. He said the portion given by the deceased in the mutation were more reasonable than the portions in the will.

Simeon Mbundi said petitioner was Bishop, Chairman and founder of Nehema Christian Pentecostal church.

He said the deceased was not a member of their church but gave them land in 1987 when the fellowship started. He said there were no documents to show that deceased gave out church. He said that the gift to church was verbal. He said a permanent church was constructed when the land was subdivided.

In consideration of the affidavit in support of the protest, affidavit of the petitioner in reply to the protest, the statements and evidence tendered in court in the proceedings related to the protest and in consideration of the subdivisions made by respective parties the issues to be determined are whether

- 1) The deceased made a will
- 2) Whether the will was valid
- 3) Whether the will was revoked
- 4) Whether the petitioner was right in ignoring the provisions of the last testament of the deceased.

Parties herein the petitioner and the protestor confirmed the deceased had made a will as to how his estate was to be shared but there was no subsequent will revoking and/or resulting the one produced by the protestor as required by Section 18 of the Laws of Succession Act. In that will, the deceased did not mention about Nehema Christian Pentecoastal Evangelical Revival Church which founder is the petitioner, who already allocated himself 2 portions from the deceased person estate against the will of the deceased.

This court finds that the will herein is valid. It was drawn and signed on 1st December 2003 and witnessed by an advocate and should be implemented as drawn unless a beneficiaries gives up their interest in favour of another.

The estate of the deceased shall be administered in accordance to the last will of the deceased.

No orders as to costs.

HON. A.ONG'INJO

JUDGE

22/11/2018

Before Hon. Adwera Onginjo, Judge

Kinoti – C/A

Mr. Gitonga Advocate for Objector

M/s Ndorongo & Co. Advocate for petitioner

Court – Ruling delivered dated and signed in court.

HON. A.ONG'INJO

JUDGE