



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

SUCCESSION CAUSE NO. 549 OF 2004

In The Matter Of The Estate Of M' Nchebere Nchebere (Deceased)

JACKSON MURIUNGI NCHEBERE.....PETITIONER

-Versus-

JONATHAN NCHOORO NCHEBERE.....OBJECTOR

JUDGMENT

[1] By Summons for Confirmation of Grant dated 12th January 2010, the Objector sought to distribute the estate of the deceased as follows:

LR NO. ANTUBETWE/NJOUNE/1122

a) JONATHAN NCHOORO NCHEBERE

[2] On 29th November 2010, the petitioner filed an affidavit of protest contending that the proposed mode of distribution by the objector was not fair as he was giving himself the whole of LAND PARCEL NUMBER ANTUBETWE/NJOUNE/1122, when the other dependants were not adequately provided for. Consequently he proposed to distribute the estate of the deceased as follows:

- I. Jonathan Nchooro Nchebere-1 Acre**
- ii. Kiriamburi Chebere-0.15 Acres**
- iii. Gerald Kabere Nchebere-0.15 Acres**
- Iv. Jacinta Nkatha Chebere-0.15 Acre**
- V. Jackson Muriungi Chebere-0.15 Acres**
- Vi. John Munoru Nchebere-0.15 Acres**
- Vii. Jacob Kaberia Nchebere-0.15 Acres**
- Viii. Stanley Muindi Nchebere-0.15 Acres**

[3] Daughters also joined the proceedings as protestors and in their affidavit on distribution on 23rd February 2015, opposed modes of distribution by both the petitioner and the objector. Their reason was that the two left out daughters in the distribution of the estate of the deceased. They accused them of selfishness; they had only taken care of themselves. The daughters proposed to distribute **ANTOBETWE/NJOGUNE/1122** as follows:

JONATHAN NCHOORO NCHEBERE-0.60 ACRE

Balance to be shared equally between the following;

JACKSON MURIUNGI

GERALD KABERE NCHEBERE

JACOB KABERIA NCHEBERE (which share should be taken by ZAKAYO MWITI

JOHN MUNORU which share should be taken over by his wife JOYCE MUNORU

REBECCA KAREA

BEATRICE KAUNANKU

JANAS ITUMA

MEEME NCHEBERE whole share be taken by his son IBRAHIM GITONGA

Viva voce evidence

[4] The petitioner testified as PW1 and stated his case to be; that the deceased was his father while the objector was his brother; the deceased had left behind 3 pieces of land namely ANTUBETWE NJUONE NO. 1122, NO. 5079 IN AMWATHI ADJUDICATION SECTION and no. 2484 in AMWATHI. It was his further evidence that there was no dispute regarding transmission of these lands save for NO. 1122, which he contended was yet to be distributed and that now they had agreed that the objector takes 1 acre thereof and the rest to be divided equally. He further testified that the daughters had not been provided for and that he was now agreeable to them being provided for and that further though he stood by his earlier affidavit, he had now changed his mind because the daughters were now on board.

[5] PW2 was Rebecca Karea. It was her evidence that that the deceased was her father and that when the petitioner and the objector filed these proceedings, they did not inform them (the daughters). She further testified that both the petitioner and the objector had not provided for them in their respective affidavits.

[6] The objectors stated their case. OW1 Jonathan Nchooro adopted his witness statement in evidence and testified that the deceased had 3 parcels of land namely; ANTUBETWE NJUONE/1122. PARCEL NO. 5079 and 2480 AMWATHI ADJUDICATION SECTION. It was his further evidence that the deceased had other parcels of land which he gave to his other sons except Stanley Kaberia, Gerald Kabeere, Jackson Muriungi and John Munoru. He further contended that he was given ANTUBETWE/NJUONE/1122 wholly in 1975 as wedding gift as he had married the same year and that he was not giving the land to himself as contended by the petitioner.

[7] OW2 was Julius Mithiaru. It was his evidence that the deceased had shared out his property before he died and that LR NO. ANTUBETWE/NJUONE/1122 had been wholly given to the objector.

Submissions

[8] After close of the respective parties' case, the court directed them to file submissions. It was submitted for the protestors that the objector had in paragraph 3 of the affidavit in support of the application for confirmation, identified only the sons of the deceased as the only persons who survived the deceased. With regard to **LR ANTOBETWE/NJOGUNE/1122**, which was the only parcel in contention, it was submitted that the objector could not claim the whole of this land when the other beneficiaries got small portions of land at Amwathi Adjudication section 2480 and 5079 which was of less value. Consequently, the protestors proposed to distribute the estate of the deceased as follows **LR ANTOBETWE/NJOGUNE/1122**;

1. Jonathan Nchooro Nchebere-0.5 Acres

2. Jackson Muriungi M' Nchebere-0.15 Acres

3. Gerald Kabere M' Nchebere

4. Estate Of Kiriamburi Nchebere

5. Julius M' Mithiaru

6. Estate Of Isaac M' Lunga (Deceased Represented By His Son Ibrahim Gitonga)

7. Estate Of Meeme Nchebere (Deceased Represented By His Daughter Kathambi

8. Estate Of Jacob Kaberia Nchebere (Deceased) Represented By His Son Zakayo Mwiti Kaberia

9. Estate Of John Munoru Nchebere (Deceased) Represented By His Wife Joyce Munoru.....0.80 Acres To Share Equally

Rebecca Karea Nchebere

Beatrice Kaunaku

Jacinta Nkatha

Kaumi Nchebere

Gituma Nchebere.....0.55 Acres To Share Equally

ANALYSIS AND DETERMINATION

[9] I have carefully considered the evidence on record and the submissions by the protestors. The only bone of contention is distribution of land parcel number **ANTOBETWE/NJOGUNE/1122**.

[10] According to the protestors, the objector could not claim the whole of **ANTOBETWE/NJOGUNE/1122**, when the other beneficiaries got small portions of land from land Parcel numbers Amwathi/Adjudication section 2480 and 5079. They beseeched the court to take into account the value of the said land in deciding the shares of the beneficiaries.

[11] The evidence on record show that daughters were not provided for in the estate. Some parties still perpetuated this discrimination in their proposed mode of distribution by making provision for sons only. The petitioner admitted the omission of daughters in the distribution of the estate was discriminatory and changed his earlier position although reluctantly. The objector on the other hand contended that he was given the whole of **ANTOBETWE/NJOGUNE/1122** by the deceased. No evidence was however tendered to support these allegations. He further insisted that the daughters were married and that as such they ought not to get anything. The law loathes such patriarchal posture. I also reject it with the contempt it deserves by citing the case of *Peter Karumbi Keingati & 4 Others v Dr Ann Nyokabi Nguithi [2014] eKLR*, where Kimaru J held as follows:

As regard to the argument by the Applicants that married daughters ought not to inherit their parent's property because to do so would amount to discrimination to the sons on account of the fact that the married daughters would also inherit property from their parent's in-laws, this court takes the view that the argument as advanced is disingenuous. This is because if a married daughter would benefit by inheriting property from her parents, her husband too would benefit from such inheritance. In a similar fashion, sons who are married, would benefit from property that their wives would have inherited from their parents. In the circumstances therefore, there would no discrimination. In any event, the decision by a daughter or a son to get married has no bearing at all to whether or not such son or daughter is entitled to inherit the property that comprise the estate of their deceased parents. The issues that the court will grapple with during distribution are the issues anticipated by Section 28 of the Law of Succession Act. This court is of the view that the time has come for the ghost of retrogressive customary practices that discriminate against women, which have a tendency of once in a while rearing its ugly head to be forever buried. This ghost has long cast its shadow in our legal system despite of numerous court decisions that have declared such customs to be backward and repugnant to justice and morality. With the promulgation of the Constitution 2010, particularly Article 27 that prohibits discrimination of persons on the basis of their sex, marital status or social status, among others, the time has now come for these discriminative cultural practices against women be buried in history.

[12] I cannot agree more. In this case, evidence has it that the sons of the deceased were provided for in Land parcel numbers AMWATHI ADJUDICATION section 2480 and 5079 except the objector. It is also not in dispute that parcel number **ANTOBETWE/NJOGUNE/1122** was located in a prime area and was more valuable than the land at Amwathi. The protestors in their proposed mode of distribution dated **23rd February 2016** had proposed to give the objector **0.60 acres**. In their submission however they proposed to give him **0.5 acres**. No explanation was however given for this sudden change of heart.

[13] Being guided by law and after taking into account the circumstances of this case, in light of the fact that all the sons of the deceased had been provided for in the lands at Amwathi except the objector and the daughters herein, **Land Parcel NO. ANTOBETWE/NJOGUNE/1122** shall accordingly be distributed as follows;

1. Jonathan Ncooro Nchenere-1 Acre

Balance thereof shall be shared equally amongst:-

2. Rebecca Kareia Nchebere

3. Jacinta Nkatha

4. Kaumi Nchebere

5. Gituma Nchebere

6. Beatrice Kaunanku.

[15] This being a succession matter, there will be no order as to costs.

Dated, signed and delivered in open court at Meru this 18th day of December, 2018

F. GIKONYO

JUDGE

In presence of:-

Athieno for protestors

Kiautha for petitioner – Mutegi holding brief

F. GIKONYO

JUDGE