



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

SUCCESSION CAUSE NO. 147 OF 2008

In the Matter of the Estate of Stanley M'Lintari M'Mungania (Deceased)

SARAH NKUINE M' LINTARI.....PETITIONER

-VS-

JACOB MUTHAURA M' LINTARI.....1ST OBJECTOR

AYUB KORONYA M' LINTARI.....2ND OBJECTOR

JUDGMENT

[1] This Succession Cause relates to the Estate of Stanley M' Lintari M' Mungania (deceased). On 24th July 2008, Grant of Letters of Administration intestate was issued to the Petitioner. On 3rd October 2008, the objectors filed an application for Revocation or Annulment of Grant contending inter alia: that the proceedings to obtain the Grant were fraudulent and was obtained secretly without involving the other beneficiaries.

[2] The 1st Objector, Jacob Muthaura M'Lintari testified as OW1. He stated that the Petitioner was her step mother and that the deceased was his father. He stated that, his father left land parcel Number Akithi 3/1069 measuring 2.10 Acres. He told the court that they had discussed distribution of the said land and agreed that the Petitioner was to get 0.60 acres, his son 0.50 acres, son of the 2nd objector 0.50 acres and daughter of the Petitioner 0.50 acres. He further testified that the Petitioner and her daughter stayed on the land but there was a small portion which he cultivated after he was given the same by his father.

[3] OW2 on the other hand, Ayub Koronja M' Lintari testified that while he partly agreed with his brother (OW1), his father had stated that the Petitioner should get 1.10 acres, his son 0.50 acres and his son 0.50 acres.

[4] The Petitioner; PW1 Sarah Nkuine Stanley M' Lintari gave evidence to the effect that the deceased was his husband having been married as the 2nd wife after the 1st wife died and that the objectors were sons of the 1st wife. It was her further evidence that she did not agree with the proposed mode of distribution by the objectors as each house was given 2 acres and that she was residing in her house (2 acres). It was her further evidence that the deceased was involved in a land dispute which was resolved in her favour by elders but the 1st objector refused to agree with that verdict.

Submissions by Petitioner

[5] It was submitted for the Petitioner that the allegations by the Objectors that the Grant was obtained fraudulently and secretly without their knowledge was false as all the beneficiaries of the estate of the deceased had consented to the confirmation of Grant and that the application was an afterthought. It was further submitted that the objectors were not entitled to the suit property as they had already received their share during the lifetime of the deceased.

Submissions by Objectors

[6] On the other hand it was submitted for the Objectors that the deceased had only one property namely Akithi III/1069 measuring 2.10 acres and that the deceased having died intestate, the law was very clear on how his only estate was to be distributed namely; equal distribution. They submitted further that there was no evidence that the Objectors had been provided for by the deceased before his demise.

ANALYSIS AND DETERMINATION

[7] I have carefully considered this application and the rival submissions by the parties. Circumstances under which a Grant may be revoked/ annulled are provided for under Section 76 of the Law of Succession Act. The Objectors in this succession cause contended that this succession cause was filed secretly. Form 38 (consent to the making of a Grant of Administration Intestate to a person of equal or lessor priority) dated 3rd January 2008 shows that the Objectors gave their consent. Similarly, they also signed a consent to confirmation of Grant dated 29th September 2008 and they did not offer any evidence to support their case that this succession cause was filled secretly or that the signatures on the two documents were forgeries. From the circumstances of this case, it is my considered view that the Objectors did not prove on a balance of probability that this succession cause was filed secretly. The Objectors therefore have not made out a sufficient case for Revocation/ Annulment of Grant. I reject the application for revocation of grant.

Distribution

[8] The Objectors alleged inter alia that they had held discussions in the presence of village elders and agreed on how the estate was to be distributed. Even though they had denied that they were provided for during the lifetime of the deceased, in cross examination they admitted that their father had given them an acre each and that he had said that the other land belonged to the petitioner. OW1 was more categorical in his evidence in chief that the Petitioner was living on the suit land with her daughter. The contention by the Objectors that they had sat down and agreed on how the land will distributed in the presence of elders was not substantiated and none of the elders was called as a witness.

[9] The Petitioner did not agree with the Objectors mode of distribution and she gave here reasons; (1) that each house had been given 2 acres on which she and her daughter live in their house built thereon; and (2) that the subdivision was done by the deceased. Her evidence was truthful, consistent, credible and unchallenged even under cross examination. She reiterated that the Objectors house was given 2 acres. Her evidence towards this respect was actually corroborated by the Objectors own evidence that they had been given an acre each by the deceased during his lifetime and the 1st objector actually confirmed that the Petitioner resided on the suit property with her daughter. Parcel number 1069 was originally 4.11 acres and the deceased gave each of objectors 1 acre and left 2.11 to his wife the petitioner. This evidence by the petitioner is supported by the adjudication record provided by District Lands Adjudication & Settlement Officer, Tigania West Sub County through his letter dated 23rd January 2017 which shows that Jacob M. Muthaura got parcel number 1087 from 1069 and Ayub M. got parcel number 1088 from 1069. And 1069 was recorded under the deceased to the petitioner. The petitioner is the widow of the deceased and she claims priority and right to the property herein. Here, I should state what I have stated in many other cases, that it is time we aligned the Law of Succession Act to the Constitution especially on rights of living spouse to the property of their marriage. In addition, the circumstances of this case and evidence adduced, show that the deceased had subdivided his land and the objectors were actually provided for during his lifetime. These two factors would entitle the petitioner to the estate property.

[10] The deceased was polygamous. Section 40 of the Law of Succession Act provides as follows;

40. Where intestate was polygamous (1) Where an intestate has married more than once under any system of law permitting polygamy, his personal and household effects and the residue of the net intestate estate shall, in the first instance, be divided among the houses according to the number of children in each house, but also adding any wife surviving him as an additional unit to the number of children.

(2) The distribution of the personal and household effects and the residue of the net intestate estate within each house shall then be in accordance with the rules set out in sections 35 to 38.

[11] It must not be forgotten that the petitioner lives on the land with her daughter who is also entitled to inherit from the her deceased father. Under section 40 cited above, and the Constitution, the daughter herein is entitled to inheritance just like her step-brothers. Accordingly, the Objectors having been provided for by the deceased during his lifetime will not partake of the estate property. The widow is entitled as of her own right to the property herein and so is the daughter of the deceased. On this basis, I direct the estate property to be shared as follows:

1. Sarah Nkuene Stanley M'Lintari- 1.11 acres; and
2. Teresia mwonjaru- 1.0 acres.

[12] The grant herein is confirmed in the forgoing terms. Summons for Confirmation of Grant dated 29th September 2008 is determined. As this is a dispute among close family members I order each party to bear own costs. It is so ordered.

Dated, signed and delivered in open court at Meru this 17th day of December 2018

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F. GIKONYO

JUDGE

IN PRESENCE OF

Muchiri for petitioner

Ayub for objector Arimi holding brief.

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F. GIKONYO

JUDGE