



REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
SUCCESSION CAUSE NO. 288 OF 2001
IN THE MATTER OF THE ESTATE OF
ALFRED MAKANGA AMBUSO (DECEASED)

BETWEEN

JUDITH AMBUSO SIKOBE APPLICANT

AND

ANDREW WERE MAKANGA PETITIONER/RESPONDENT

RULING

1. This matter concerns the estate of Alfred Makanga Ambuso (“the deceased”) of Ehubayi, East Bunyore within Vihiga County who died on 10th October 1996. His eldest son Andrew Were Makanga (“Andrew”) applied for letters of administration intestate by the petition filed on 21st May 2001. In the affidavit in support of the petition (Form P & A 5), he stated that the deceased was survived by himself, Gladys Ambasa, the widow, Harun Masaba and Daniel Astiba. He also stated that the deceased had left behind two immovable properties; East Bunyore/Ehubayi/2052 (“Plot 2052”) and Isukha/Shirere/1841 (“Plot 1841”), an account at Barclays Bank Kisumu and a motor vehicle Bedford Lorry KDX 645.

2. The court issued a grant of letters of administration on 17th September 2003 which was confirmed on 27th June 2011. The property was distributed as follows;

- Harun Masaba Ambasa and Daniel Asitiba – Plot 2052
- Harun Masaba Ambasa and Daniel Asitiba – Plot 1841
- Gladys Ambasa – Barclays Bank Account
- Andrew Were – Bedford Lorry KDX 645

3. In due course the applicant, Judith Ambuso Sikobe (“Judith”) moved the Court by summons dated 27th June 2014 to revoke the grant issued to Andrew. In her supporting affidavit, she stated that as a daughter of the deceased’s first house, she was excluded from the succession proceedings by the Andrew. She only discovered that Andrew had taken out letters of administration for the deceased’s estate when he disclosed the fact in citation proceedings Judith had filed at the **Kakamega High Court (Succession Cause No. 744 of 2013)**.

4. In response to summons for revocation of grant, Andrew filed an affidavit sworn on 4th August 2014 in which he stated that Judith was not willing to disclose her interest in the matter so that her interests could be accommodated in the distribution of the deceased’s property. He stated that he was ready and willing

to accommodate all parties in distribution hence there was not need to revoke the grant.

5. Since, it turned out that the matter concerned distribution both parties filed their respective proposals. I also directed that the matter be heard by viva-voce evidence. It is not in dispute that the deceased had two wives. Judith was the only child from the first house while the second house comprised Andrew, Harun, Daniel and Joshua Makanga (“Joshua”) who is now deceased. Joshua is survived by his wife, Mary Makanga and children, Erick Makanga and Geoffrey Makanga.

6. Judith’s case is that she and the children of Joshua had been excluded from the distribution. In her the proposal dated 21st July 2015 she submitted that she and Joshua be included in the distribution of Plot 2052 and Plot 1841. She also proposed that she be included in the share of the Barclays Account and the Bedford Lorry.

7. Andrew filed his proposal dated 28th October 2015 in which he proposed that Plot 2052 be divided between Harun (1.4 Acres), Daniel (1.4 Acres) and Judith (0.04Acres) and Plot 1841 be divided between Harun, Daniel and Judith in equal shares while Andrew would take the Bedford lorry absolutely.

8. From the hearing, it became apparent that Judith was concerned that the children of Joshua had not been provided for. Andrew testified that they were not interested in the deceased’s property. In addition, he told the court that their father had distributed the land prior to his death. I therefore summoned Joshua’s wife and children to attend court to confirm their position in the matter. Mary Makanga, Eric Makanga and Geoffrey Makanga attended court and confirmed that they had no claim to the deceased’s estate.

9. While it is true that the petitioner, failed to disclose that Judith was a survivor of the deceased and that she was entitled to the part of the estate, the dispute concerns distribution of the estate. Judith’s grievance that her late brother’s children were not provided for is now moot since they have renounced any claim to the estate.

10. As to the proposed distribution, I cannot fault the proposal by the petitioner since it takes into account that the deceased had already divided his homestead between his sons who have already built their homes. I am fortified in this reasoning because the initial grant was confirmed was confirmed on the same terms when the deceased wife, Grace Ambasa was still alive. Both Harun and Daniel have nevertheless agreed to cede to her a portion thereof. However, to ensure equity and fairness in the distribution, Judith shall have a larger share of Plot 1841. The lorry is taken by Andrew who does not inherit any other property.

11. I revoke the grant issued to Andrew and confirmed on 27th July 2011. The grant is however re-issued and confirmed on the following terms;

Harun Masaba Makanga , 1.98 Acres

Daniel Asitiba Makanga East Bunyore/Ebubayi/2052 1.98 Acres , 0.04 Acres

Harun Masaba Makanga

Daniel Asitiba Makanga , Isukha/Shirere/1841 1/3 equally

Judith Ambuso Sikobe , 2/3

Andrew Were Makanga , KDX 645 Bedford Lorry Whole

Daniel Asitiba , Barclays Bank Kisumu Account No. 3630203 Whole.

12. As this a family matter, there shall be no order as to costs.

DATED and DELIVERED at KISUMU this 30th day of January 2017

D. S. MAJANJA

JUDGE

Mr Mukabwa instructed by S. B. A. Mukabwa and Company Advocates for the applicant.

Mr Anyul instructed by D.O.E Anyul and Company Advocates for the petitioner/respondent.