



REPUBLIC OF KENYA
IN THE HIGH COUR OF KENYA AT MACHAKOS
SUCCESSION CAUSE NO. 719 OF 2013

IN THE MATTER OF THE ESTATE OF THE LATE JOSEPH MUYENDI KATULA (DECEASED)

MARGARET MUMBUA J. MUYENDI)

PIDAN MUSAU KATULA).....PETITIONERS

VERSUS

PENINA KALULU MUYENDI.....OBJECTOR

RULING OF THE COURT

1. The Objector/Applicant herein has filed an objection to the making of grant and is dated 13/03/2014. The Objector raised the following grounds in support of her objection:

(a) That she was the second wife of the deceased with whom she cohabited for more than twenty (20) years and had children.

(b) That the 1st Petitioner and 2nd Petitioner who are co-wife and brother in law respectively filed this Petition without consulting the Objector and her children in a bid to vest deceased's properties secretly to her and her children to the detriment of the Objector.

(c) The Objector seeks to be made a Co-Petitioner and that the 2nd Petitioner be dropped.

2. The 1st Petitioner opposed the Objector's Application and maintained that the Objector had been a mistress of the deceased and after the death of the deceased she became unco-operative towards resolutions of the family issues. The 1st Petitioner further averred that she tried to involve Objector in the Succession to no avail and was forced to rope in her brother in law and further ensured that the Objector and children were listed as beneficiaries to the estate. The 1st Petitioner further averred that she does not wish to have the Objector as a Co-Administrator due to irreconcilable differences and that the Objector and her children have no cause for worry since their interests would be taken care of.

3. Parties took directions to the effect that the objection be canvassed by way of viva voce evidence.

4. The Objector's case

The Objector testified that the deceased married her as his second wife and cohabited together for over twenty (20) years and were blessed with five (5) children. She testified that her marriage was under Kamba Customary Laws in which all the customs were performed. She claimed that the 1st Petitioner herein who is her co-wife instituted this Petition without including her as a Co-administrator and the

Objector therefore felt that her co-wife intended to disinherit her and her children. She further testified that all the properties of the deceased have been sold and nothing was given to her. She now wants to be made a Co-administrator and the 2nd Petitioner be removed. The Objector on being cross-examined by the 1st Petitioner's Counsel confirmed that she and the 1st Petitioner are not on talking terms and therefore they cannot jointly run the estate together peacefully. The Objector further admitted that she was aware of 1st Petitioner's marriage to deceased before she married the deceased as a second wife and further admitted that the P&A 5 Form contains her names and those of her children as beneficiaries.

5. 1st Petitioner's Evidence

The 1st Petitioner testified that she got married to the deceased on 19/04/1969 under the African Christian Marriage and Divorce Ordinance and lived with him peacefully and acquired property together until the Objector entered into the equation and messed her relationship with her husband. She testified that the Objector installed herself into the 1st Petitioner's matrimonial home and from then on life became unbearable until the 1st Petitioner was forced to move out and sought accommodation elsewhere. She stated that the Objector began on a mission of misusing and disposing properties. The 1st Petitioner averred that she is not ready to have the Objector as her Co-administrator as they are not on good talking terms and that the 1st Petitioner prefers that she remains the Administrator until the properties are distributed. The 1st Petitioner finally stated that she is residing on her own plot which she purchased upon being edged out by the Objector from the matrimonial home.

6. Parties filed submissions which I have carefully considered. I have also considered the rival evidence of both Objector and 1st Petitioner. It is not in dispute that the 1st Petitioner had been married by the deceased under the African Christian Marriage and Divorce Ordinance (repealed) whereas the Objector was married by the deceased under Kamba Customary Laws. It is also not in dispute that the 1st Petitioner has already included the names of the Objector and her children in the Petition form P&A 5. The issue for determination is whether the Objector has made out a case warranting her to be made as a Co-administrator to the estate of the deceased.

7. First and foremost, it is noted that the Objector got married to the deceased during the subsistence of a valid marriage between the deceased and the 1st Petitioner and therefore for all intents and purposes the said marriage would have been void by dint of the provisions of Section 11 (1) of the Marriage Act as the deceased lacked capacity to enter into another marriage while there was a valid one in existence. However the Law of Succession Act Section 3(5) will come to the aid of the Objector who would otherwise have been thrown under the bus so to speak. The same provides as follows:-

“Notwithstanding the provisions of any other written law, a woman married under a system of law which permits polygamy is, where her husband has contracted a previous or subsequent monogamous marriage to another woman, nevertheless a wife for the purposes of this Act, and in particular Section 29 and 40 thereof and her children are accordingly children within the meaning of this Act.”

The Objector and her children therefore are entitled to benefit from the estate of the deceased.

8. Secondly, during the filing of this Petition the 1st Petitioner included the Objector and her children in the list of beneficiaries. Indeed Petition Form P&A 5 reveals the same and further the Objector confirms the same. Hence the Objector's main grouse with the Petitioners is that she had been left out as an administrator of the estate. The Objector also claims that some assets of the deceased have been left out.

9. Thirdly, it transpired from the evidence of both Objector and the 1st Petitioner that the two do not get along together due to strained relationship right from the time the Objector arrived at the scene. Indeed the Objector admitted on cross – examination that she and the 1st Petitioner are not on talking terms and therefore she agreed that she and the 1st Petitioner cannot jointly run the estate of the deceased together

peacefully.

10. Fourthly, due to the strained relationship between the Objector and 1st Petitioner, I find it is not practicable for the two to jointly work together. The Objector herself has admitted that it is not possible for the two to jointly run the estate due to the age long animosity and hostility. I find there is really no prejudice to be suffered by the Objector since already she and her children have been listed as beneficiaries. During the confirmation of the grant then the Objector shall be at liberty to point out issues to do with assets and their distribution and she could still be at liberty to file affidavit of protest if need be.

11. Fifthly, the Objectors conduct throughout her evidence revealed a person full of anger at being left out from being one of the Administrators yet she confirms that she and the 1st Petitioner cannot jointly run the estate together peacefully. It seems therefore that the Objector's zeal is just to checkmate her co-wife and thereby delay or stall the entire process. The Objector also wants the second Petitioner who is a brother in law removed from being an administrator. The 2nd Petitioner is neither a beneficiary of the estate and his role is only to assist in the administration of the estate and once the grant is confirmed and estate distributed among the beneficiaries, the role of administrators shall come to an end.

12. In the result it is the finding of this court that the Objector has not presented sufficient grounds to justify a refusal to the making of a grant of representation to the estate of the deceased herein. Consequently the Objection dated 13/3/2014 is ordered dismissed with no order as to costs. A grant of letters of administration shall issue forthwith to the two (2) Petitioners herein. Upon the issuance of the said grant, the Petitioners are ordered to proceed to file summons for confirmation of grant and ensure that they involve all the beneficiaries to the estate.

It is so ordered.

Dated, signed and delivered at MACHAKOS this 27TH day of JULY, 2017.

D. K. KEMEI

JUDGE

In the presence of:

Penina Kalulu

C/A: Kituva