



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT CHUKA

SUCCESSION CAUSE NO. 690 OF 2015

(FORMERLY MERU HIGH COURT SUCCESSION CAUSE NO. 190 OF 2003)

IN THE MATTER OF THE ESTATE OF BAINI MATHAI (DECEASED)

MARGARET CIAKUTHII MBOANI.....PETITIONER

- VERSUS -

CHARITY MBETA.....OBJECTOR

J U D G M E N T

1. Baini Mathai "*the deceased*" died on 30th February, 1976. He left behind a widow and nine (9) children. He also left LR No. Karingani/Mugirirwa/50 as his estate. Before his demise as aforesaid, the deceased had invited to his above said property his cousin, Margaret Gathuni Mboani ("*the Petitioner*") where she has been living to date.

2. On 6th June, 2003 Charity Mbete ("*the widow*"), and the Petitioner petitioned for Letters of Administration of the estate of the deceased. The same was granted on 18th September, 2003. By an application dated 1st March, 2004, the grant was sought to be confirmed. However, since Charity Mbete disclaimed having signed that application, the same was struck out on 8th May, 2006. No other application for confirmation was filed thereafter but the parties filed Affidavits of proposed mode of distribution on which their respective Advocates filed written submissions.

3. Margaret Ciakuthi Mboani swore that she was a cousin to the deceased, that her proposal was that the property LR No. Karingani/Mugirirwa/50 be shared equally between her and the widow with each person being given where she is currently occupying. Her reasons for such proposal was that she had been awarded half share of the property by the District Land Tribunal and in the Provincial Appeal Tribunal Case No. 78 of 1999. Further, that she had undertaken extensive developments on her portion. Her Counsel submitted that the dispute had been heard and determined by the Meru South Land Dispute Tribunal and the Provincial Appeals Tribunal which had determined that the property be divided into two (2) equal shares. That the property had wrongfully been registered in the name of the deceased instead of Margaret Ciakuthii Mboani. That on the basis of section 29 (b) of the Law of Succession Act, Margaret was a dependant of the deceased and she was accordingly entitled to half share of the estate.

4. On the other hand, the widow swore that the deceased had allowed the Petitioner to cultivate the estate land to an extent of 0.50 acres. That the deceased had left behind nine (9) children and four (4) creditors being Festus Mwalimu Muranga, Benson Kinyua Mbaka, Mutegi Mukono and Mukuru Kiriki. She proposed that the Petitioner be given 0.50 acres which had been given to her by the deceased and the various portions distributed to her, the children of the deceased and the four (4) creditors. Mr. Mugo

learned Counsel for the widow submitted that the Petitioner was not a beneficiary of the deceased; that she was only entitled to 0.50 acres given to her by the deceased. That since the property measured 9.50 acres, the distribution of the estate should be as proposed by the widow.

5. I have considered the Affidavits on record and the submission of learned Counsel. The issues for determination are:-

- a) who are the beneficiaries of the deceased?
- b) was the Petitioner a dependant of the deceased?
- c) what is the position of the decisions of the Meru South Land Disputes Tribunal and the Provincial Appeal's Tribunal?
- d) how should the estate be distributed?

6. From the letter of the Chief Mugwe location dated 29th May, 2003, those listed as dependants are Margaret Ciakuthii Mboani, Charity Beta Baini, Mbaka Baini, Kagendo Gitonga, Njeri, Kanyua, Wanja, Urita and Kecia. Save for Margaret who is identified as a sister and Charity who is identified as the widow, the rest are the children of the deceased. The cumulative effect of sections 35 to 39 of the Act is that direct beneficiaries of an estate of the deceased is the spouse and children of a deceased person. Indeed under section 39 of the Act, it is when there is no spouse or son that inheritance proceeds to the parents of the deceased person, brothers and sisters, cousins then to the relatives who are of the nearest degree of consanguinity to the sixth degree. In this case therefore, the direct beneficiaries of the deceased are the widow and the children of the deceased.

7. What is the position of Margaret Mboani the Petitioner? It is not in dispute that she was a cousin to the deceased. The scanty evidence on record shows that she was invited by the deceased to come and live in the estate land during the deceased's lifetime. She eked her livelihood from the estate land. In this regard, she was but a dependant of the deceased as she was being maintained by the deceased as at the time of his demise Accordingly, I am satisfied that Margaret Ciakuthi Mbauni was a dependant of the deceased under section 29 (b) of the Act.

8. Provincial Appeal's Board. I have looked at the proceedings of the said Tribunals. The disputed was instituted in 1995 by the Petitioner. The proceedings were placed on record by Margaret Mboani in support of her claim for half the share of the estate. The disputed before the Tribunals was between Margaret Mboani and the widow of the deceased. the latter was not sued in her capacity as an administrator of the estate of the deceased but in her own personal capacity. The allegations as contained in the submissions of the Advocates for the Petitioner were that the estate land belonged to the father of Margaret but when he submitted the same for registration of the same in her name, the father of the deceased who was a member of the land committed caused the same to be registered in the name of the deceased. That the land therefore belonged to the Petitioner and not the deceased.

9. Several questions arise from the aforesaid allegations. Why didn't Margaret lodge her claim against the deceased, who had allegedly defrauded her, during his lifetime? Why wait until 1995, 19 years after the demise of the deceased to lodge the claim against the widow instead of his estate? To my mind, in so far as the widow was not claiming the property on her own right, the Tribunals were engaging in an exercise in futility. The claim should have been brought either against the deceased, his estate or the administrator of his estate. It does not escape this courts attention that the first time the widow applied for Letters of Administration, jointly with Margaret Mboani, was in June, 2003.

10. To my mind, the Tribunals could not adjudicate upon the property of a deceased person yet they were not a family court. In any event, the decisions of the said Tribunals do not seem to have been lodged in court for them to be of any legal effect by way of being decrees. To that extent the claim for half share based on the tribunal proceedings has no basis and is hereby rejected.

11. In view of the foregoing, how should the estate be distributed. According to the evidence on record, the Petitioner was a dependant of the deceased. She was invited to and she continues to occupy the estate land. She never disputed the averments made on oath by the widow that she occupies 0.50 acres which was given to her by the deceased. As regards the rest of the beneficiaries and the Creditors, there is nothing on record to show that the widows proposal is unfair. Accordingly, I confirm the grant issued on 18th September, 2003 as follows:-

(a) LR NO. KARINGANI/MUGIRIRWA/50

i. Charity Mbeta Baini	-	1.95 acres
ii. Jason Mbaka Baini	-	1.70 acres
iii. Jason Mbaka Baini	-	1.75 acres
iv. Yulither Karimi Joseph	-	0.10 acres
v. Millicent Kagendo Mbura	-	0.10 acres
vi. Kezia Kawira Baini	-	0.10 acres
vii. Shalon Wanja Baini	-	0.10 acres
viii. Priscilla Njeri Njoka	-	0.10 acres
ix. Edith Kanyua Baini	-	0.10 acres
x. Caroline Kangai Baini	-	0.10 acres
xi. Festus Mwalimu Muranga (Creditor)	-	1.00 acre
xii. Benson Kinyua Mbaka (Creditor)	-	1.00 acre
xiii. Mutegi Mukono (Creditor)	-	0.10 acre
xiv. Margaret Ciakuthii Mbuani	-	0.50 acre
xv. Mukuru Kiriki (Creditor)	-	0.25 acre

It is so decreed.

DATED and delivered at Chuka this 13th day of October, 2016.

A. MABEYA

JUDGE

Judgment is read and delivered in the presence of Ms Kaaria representing both advocates.

A. MABEYA

JUDGE

13/10/2016