



REPUBLIC OF KENYA

IN THE HIGH COURT AT KAKAMEGA

SUCCESSION CAUSE NO: 360 OF 1998

IN THE MATTER OF THE ESTATE OF MICHEAL
MAKOKHA.....DECEASED

AND

FLORENCE NEBANDA OCHOMO.....PETITIONER

VERSUS

PETRONILA NASIBE MAKOKHA.....OBJECTOR

JUDGEMENT

The succession cause relates to the estate of **MICHEAL MAKOKHA**. The deceased disappeared for many years and has not been seen again. According to the letter from the Bunyala West Location chief dated 6/7/1998, the deceased disappeared in 1973. Florence Nebanda Ochomo, deceased's daughter filed this succession cause. She was issued with a grant on 30/9/1998. The grant was confirmed on 23rd October 1998 whereby plot number **BUNYALA/BUNDONGA/176** was distributed to the petitioner.

On 29/3/2010, Petronila Nashide Makokha filed the summons for revocation of the grant. This matter proceeded by way of oral evidence. Petronila's evidence is that she is the deceased's first born daughter. The deceased had four daughters from the same mother. The daughters are Petronila, Anastasia, Florence and Sicilia. Their late father disappeared when they were still young. Their mother was called Rosa Nekesa. She is married and was born in 1947. According to her the petitioner is her young sister.

Anastacia Nechesa testified as PW2. Her evidence is that she is the daughter of Michael Makokha. Their mother is Rosa Nechesa. Their father got lost and they were brought up by their grandmother, Alima Chitai. The last born daughter was three months old when their father got lost. They resolved to allow the petitioner to live on the plot as she had difficulties in her marriage. PW3 Sisicial Shikaba gave the same evidence as PW1 and PW2. She is a daughter of the deceased. She testified that she is the last born. Their mother died when she was still suckling. They had an uncle by the name Ali Masero.

PW4, ZAINABU MTAMBO ANGATIA testified that Michael Makokha had four daughters. He disappeared. She took care of the suit land so that she could give it out to the four daughters. Michael Makokha was her brother in law. Her husband was called Yohana but he became Ibrahim Mutambo after he converted to Islam. She knows the petitioner as a sister to the other daughters, PW1, PW2, and PW3. According to her, the daughter's mother was only married to the deceased. She had no other husband.

On her part, the petitioner, Florence Nebanda Ochiomo testified that she is the only daughter of the deceased. Her mother was Rosa Nechesa she has no sisters. She had a sister and a brother who were twins but they died at births. Her father disappeared in 1968 and her mother went to live with her uncle

Ali. Florence's further evidence is that she has lived on the suit land for 31 years. Her mother lived with another man in Kitale and got married to her father when she had the other children. She was born in 1952. She knows PW4 as the wife of her young uncle. Zainabu got married to her uncle when Florence (DW1) was five years.

PATRICK BARA MASAMBO testified as **DW2**. He is a neighbour to Florence. His evidence is that Florence has lived on the suit land for 31 years. Her father disappeared. He does not know PW1, PW2, and PW3. According to him, the deceased had only one wife.

The main issue for determination is the beneficiaries of the deceased. The deceased herein disappeared in 1968 according to the petitioner although the chief's letter gives the year 1973. All in all, I do find that the deceased has been absent for a period long enough under the law to qualify being declared dead. Whereas the objector and her other sisters contend that they are the deceased's children, the petitioner maintains that she was born alone and does not know the objector.

According to PW1, she was born in 1947. The deceased disappeared in 1968 according to the petitioner. The petitioner was born in 1952. It's the objectors evidence that the petitioner is the third born. There is PW3 who is the last born. According to PW1 and PW4, the deceased had only one wife, Rosa Nechesa. The petitioner does confirm that PW4 was married to the homestead when DW1 was five years old. That would give an estimate of 1957 as the petitioner was born in 1952.

From the evidence on record, I do find that the PW1, PW2 and PW3 are the children of the deceased. There is no evidence that the three beneficiaries were not the deceased's children. The contentions by the petitioner that the other beneficiaries were born in Kitale are not true. If that were to be the case, then it would mean the deceased divorced his wife Rosa after Florence was born as PW3 is the last born. There is no evidence that PW1 – Pw34 are from a different father. PW4 was married to the homestead when all the parties were still young. I do believe her evidence which is in line with the plaintiff's case.

I am satisfied that the petitioner filed this cause without involving her sisters. The four sisters are from the same father and mother. The defendant did not even attempt to give the name of the father of her sisters. I do find that the petitioner is driven by greed and is ready to denounce her own sisters.

In the end, I do hold that the plaintiff has proved her case. The grant issued to the petitioner is hereby revoked. A fresh grant shall be issued in the names of PW1, PW2 and PW3. The deceased's estate, Plot number **BUNYALA/BUDONGA/176** shall be distributed as follows:-

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|-------------------------------------|--------------------------|
| 1. PETRONILA NASHIBA MAKOKHA | |
| 2. NASTANCIA MAKOKHA IMBOSA | Equally with each |
| 3. FLORENCE NEBANDA OMOCHO | get approximately |
| 4. SISILIA SHIALABA BARASA | one acre. |

Since the parties are sisters each shall bare her own costs.

DATED AT KAKAMEGA THIS 20TH DAY OF FEBRUARY 2014

SAID J. CHITEMBWE

J U D G E