



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MERU

M'MARTE M'MWAMBA(alias) MARETE MWAMBA

SUCCESSION NO. 40 OF 2012

JAMES KOOME M'MARETE.....PETITIONER

VERSUS

MIRITI M'MARETE.....PROTESTOR

R U L I N G

The 1st petitioner and 2nd petitioner were issued with grant of letters of administration intestate to the estate of M'Marete M'Mwambia alias Marete Mwamba on 29th May, 2012. The 1st petitioner James Koome M'Marete through summons for confirmation of the grant sought the grant issued to the petitioners be confirmed and that the 2nd petitioner Miriti M'Marete be at liberty to file his mode of distribution.

The 1st petitioner sought the estate to be distributed as per paragraph 8 of his supporting affidavit in which he had sought all the deceased properties L.R.Abothuguchi/Mariene/1305,1306,1307,1309,1307,1309, be shared equally among all the beneficiaries so that each gets an aggregate total acreage of 0.32 acres, whereas as regards L.R.No.Abothuguchi/U-Kaongo/394 he proposed the same be shared equally so that each beneficiary gets 0.21 acres. He deponed that the deceased beneficiaries were his widow, 2 daughters and two sons and that the deceased estate comprised of L.R.NO.Abothuguchi/Mariene/1305,1306,1307,1309, and Abothuguchi/U-Kaongo/394. That all other beneficiaries save the 2nd petitioner have consented to the mode of distribution proposed by the 1st petitioner and signed consent for confirmation of grant and the mode of distribution on 16th April, 2013 before a Commissioner for Oaths.

The 2nd petitioner did not file a protest or mode of distribution that he would have preferred. That when the matter came up for confirmation of grant on 25th June, 2013 the 2nd petitioner informed the court that he had filed a protest but he had not served the advocate; consequently the confirmation was adjourned and the 2nd petitioner granted five(5) days to serve the protest upon the Advocate for the 1st petitioner.

The 2nd petitioner's protest was filed on 1st June, 2013. He stated that he was totally disagreeing with the proposed mode of distribution by the petitioner seeking that the matter be referred back to the family members and/or elders for arbitration and thereafter file a consent agreeable to all beneficiaries.

On 22nd July, 2013 parties sought directions that the issue on distribution be determined by way of

written submissions. Submissions on behalf of 1st petitioner were filed by the firm of M/S Mwenda Mwarania, Akwalu & Co. Advocates on 24th October, 2013 whereas submissions on behalf of the 2nd petitioner were filed by firm of M/S Leonard Ondari & Co. Advocates. That the counsel for both firms highlighted on their respective submissions. Mr. Mwenda Mwarania, learned Advocate for the 1st petitioner relied on the mode of distribution proposed by the 1st petitioner adding that it is fair and reasonable as the estate shall be equitably distributed amongst all the beneficiaries and that the 2nd petitioner had not given any reason for objecting to the distribution save he felt the widow and the deceased daughters were not entitled simply because they were women. He further submitted the 2nd petitioner refused to sign consent to the mode of distribution arguing the daughters of the deceased are not entitled to share in the estate. That the objector he submitted had not disclosed whether daughters were married or not nor did he give reason for objecting to his own mother being catered for.

The 2nd objector proposed L.R.No.Abothuguchi/Mariene/1305,1306,and Abothuguchi/Upper-Kaongo/394 to be shared equally between himself and the 1st petitioner and that Abothuguchi/Mariene/1304 comprising of 0.49 acres be shared equally amongst the widow and two daughters of the deceased, whereas on Abothuguchi/Mariene/1309 he proposed the 1st petitioner and himself should get 0.11 acres and Phyllis Kathambi, a creditor to the estate get 0.13 acres.

The issue for determination in this cause is which of the two proposals on the mode of distribution proposed by the 1st petitioner and 2nd petitioner should be adopted by the court and which of them is fair and reasonable.

The 2nd petitioner in his proposal he has not given reason why the two daughters of the deceased and the widow should share 0.49 acres whereas he shares equally the rest of the other lands with his brother the 1st petitioner. He has simply stated the two daughters are not entitled and he has not given any reason why they are not entitled to share of the deceased estate equally with him. He has equally not mentioned why the widow is not entitled to more than 0.16acres which he proposes. All other family members have approved the proposal by the 1st petitioner.

The proposal by the 2nd petitioner is discriminating the female beneficiaries on the ground of sex and is against the Law of Succession Act and by sanctioning it this would be acting contrary to the Constitution as the daughters and the widow would be deprived of their right to inheritance on the ground of sex.

Article 27(1) and (4) of the Constitution of Kenya, 2010 provides:-

27. (1) every person is equal before the law and has the right to equal protection and equal benefit of the law.

(4) The State shall not discriminate directly or indirectly against any person on any ground, including race, sex, pregnancy, marital status, health status, ethnic or social origin, color, age, disability, religion, conscience, belief, culture, dress, language or birth.

Further Section 29(a) of the Law of Succession Act defines “dependant” to include both sons and daughters as well as widow.

Section 29(a) of the Law of Succession Act provides:-

(a) The wife or wives, or former wife or wives, and the children of the deceased whether or not maintained by the deceased immediately prior to his death;

In view of the foregoing I find and hold that the proposal by 2nd petitioner is discriminatory, unconstitutional and intended to disinherit the daughters and widow of the deceased and unfairly enrich the 2nd petitioner. The proposal is unfair, irrational, unjustified and has no basis in the modern Kenya

Society in which all persons are entitled to protection of the law and equal benefits. I reject the proposal by the 2nd petitioner as it would if allowed disinherit the deceased daughters and the widow simply on the ground of sex. I have on the other hand considered the proposal put forward by the 1st petitioner and which is supported by all beneficiaries save the 2nd petitioner who has not given reasonable, or excuse for objecting to the said proposal, I find it to be fair, reasonable and all inclusive and I do adopt the same for the purposes of distribution of the deceased estate.

In view of the foregoing I order that the deceased estate shall be shared and distributed as follows:-

1. L.R NO.ABOTHUGUCHI/MARIENE/1305
 - a. JAMES KOOME M'MARETE - 0.25 ACRES
 - b. FAITH GAKII MARETE - 0.24 ACRES

2. L.R. NO. ABOTHUGUCHI/MARIENE/1306
 - a. MIRITI M'MARETE -0.32 ACRES
 - b. FAITH GAKII MARETE -0.24 ACRES

3. L.R ABOTHUGUCHI/MARIENE/1307
 - a. JAMES KOOME M'MARETE -0.07 ACRES
 - b. ANITA NYOROKA M'MARETE -0.32 ACRES
 - c. KINANKARAU M'MARETE -0.10 ACRES

4. L.R.NO.ABOTHUGUCHI/MARIENE/1309
 - a. PHILLIS KATHAMBI KIRUGI -0.13 ACRES
 - b. KINANKARU M'MARETE -0.22 ACRES

5. L.R. NO.ABOTHUGUCHI/U-KAONGO/394
 - a. JAMES KOOME M'MARETE -0.21 ACRES
 - b. MIRITI M'MARETE -0.21 ACRES
 - c. KINANKARU M'MARETE - 0.21 ACRES
 - d. ANITA NYOROKA M'MARETE -0.21 ACRES
 - e. FAITH GAKII MARETE -0.21 ACRES

6. That confirmed grant do issue in terms of prayers NO.1 to 5.

7. That as parties are related being brothers and sisters I direct each party bear its own costs.

DATED, SIGNED AND DELIVERED AT MERU THIS 29TH DAY OF MAY, 2014.

J. A. MAKAU

JUDGE

Delivered in open court in the presence of:

1. Mr. Mwenda Mwarania for 1st petitioner

2. Mr. Leonard Ondari for 2nd petitioner

J. A. MAKAU

JUDGE