



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MERU
SUCCESSION CAUSE NO.87 OF 1990
IN THE MATTER OF THE ESTATE OF BAKARI JUMA(DECEASED)
SAID BAKARI.....PETITIONER
VERSUS
SAID WAZIRI.....OBJECTOR
MOHAMMED H. KAMAU BAKARI.....APPLICANT/1ST OBJECTOR
ASHA BAKARI.....2ND BENEFICIARY/OBJECTOR
ZUHURA BAKARI.....3RD BENEFICIARY/OBJECTOR
ASUMAN BAKARI.....4TH BENEFICIARY

R U L I N G

The petitioner Zaidi Bakari was appointed by this court as administrator of the estate of the late Bakari Juma. The petitioner and the beneficiaries failed to agree on mode of distribution. Consequently the petitioner filed his submissions on mode of distribution dated 22nd October, 2013. The 1st objector Mohammed Kamau Bakari filed his submissions dated 19th February, 2014. The 2nd objector Asha Kiogora Mohammed filed her submission dated 18th March, 2014 whereas the 3rd objector Zuhura Bakari filed her submissions dated 19th February, 2014.

When the matter came up for highlighting on the submissions Mr. L. Kimathi learned Advocate appeared for the petitioner jointly with Mr. J. D. Mbaya, learned Advocate, Mr. G. G. Mugambi learned Advocate appeared for the 1st objector. Mr. Muriuki, learned Advocate appeared for the 2nd objector whereas the 3rd objector appeared in person. I have carefully considered the written submissions and oral submissions as well as the opposing positions by the respective parties on the mode of distribution.

The issues for determination in this cause is how the deceased estate should be distributed and which of the for proposals would ensure fair and equitable distribution amongst the beneficiaries to the deceased estate.

The petitioner's submissions is that the deceased was survived by 3 sons and 3 daughters and the estate comprised of Ntima/Igoki/1231 which the petitioner has already sub-divided into L.R. No's

Ntima/Igoki/8121 to 8131 resulting to 10 portions to which according to the petitioner each of the beneficiaries consented to subdivision and each of the beneficiaries has been allocated the portions on which they live and that a road of access has already been agreed as per attached map. The petitioner submits that the sons should get equal shares of the estate after deducting of one(1) acre awarded to the objector Zaidi Waziri by the court. He further proposes that front plot facing the Meru-Maua road as it is too small should be sold and the proceeds be shared amongst all the beneficiaries including the two daughters of the deceased namely:-Asha Bakari and Zuhura Bakari as both are married and their sister Zaituni Bakari, 3rd Objector, who never married gets a share like the sons. He has enumerated how each of the plots from No.8121 to 8131 should be distributed. He concluded by stating that each of the above-mentioned plots have a title deed and each of the beneficiaries has received his/her respective title in their respective names except Mohammed Abdalla who has refused to pick his title deed from the lands offices.

It is further submitted on behalf of the petitioner, that the petitioner has sold his plot No.8124 transferred it to a purchaser while Asumani Bakari has also sold his plot No.8126 and 8127 and effected transfers to the purchasers and that the only plot not distributed to anyone so far is plot NO.8121 which the petitioner proposes it be sold and proceeds be shared amongst all the beneficiaries.

The 1st objector, Mohammed H. Kamau Bakari through his submissions dated 19th February, 2014 is in agreement with the petitioner as regards the deceased beneficiaries being 3 sons and 3 daughters. The 1st objector further concurs the property left behind by the deceased is L.R.Ntima/Igoki/1231 which he submits should be distributed amongst the beneficiaries. He submits the total land measuring 1.416 hectares out of which 0.40 hectares was given to Zaidi Wazir the objector, leaves a balance of 1.016 hectares proposing the same be shared by the 6 beneficiaries. He further submits the position of the road of access was altered and is completely different with the position on the map. He averred the alteration was done by the petitioner and Asman Bakari and Said Wazir as per report filed in court on 7th November, 2012. The 1st objector submitted that the relocation of the road of access should remain where it was originally because if allowed to change it would interfere with 7 family members' graves. He further submitted the original mutation dated 20/11/1986 should remain and the new mutation by the petitioner be rejected. It is further submitted on behalf of the 1st objector that the petitioner had without the consent of other beneficiaries carried out subdivision of the original land into the portion No's L.R.Ntima/Igoki/8121 to 8131 out of which the petitioner allocated to himself L.R.Ntima/Igoki/8124(0.008 ha) L.R Ntima Igoki/8129(0.09 ha) and L.R.Ntima/Igoki/8130(0.10ha) out of which he sold 8124 and 8129 remaining with Plot No.8130. The petitioner is alleged to have registered himself as proprietor of L.R.Ntima/Igoki/8121,8124 and 8125. On the other hand it is submitted Asman Bakari colluded with the petitioner and registered himself as proprietor of L.R.Ntima/Igoki/8123 and sold L.R.Ntima/Igoki/8126 measuring 0.25 Ha and Ntima/Igoki/8127 to Efforts Limited. The 1st objector submitted the above information is supported by the surveyor's report which was filed after court's order to visit the locus and file the report on occupation of the land. The 1st objector submitted further that the other four beneficiaries namely:-Mohamed Bakari, Asha Bakari Zuhura Bakari and Zaituni Bakari have not been registered as proprietors of any parcel of land and are likely to be disinherited by the petitioner and Asman Bakari.

The 1st objector on behalf of the four unprovided for beneficiaries proposed that:-

a. The three sons of the deceased to get equal shares of lands measuring 0.22 ha each.

b. The three sisters to get each shares as follows:

i. Asha Bakari – 0.06 ha of land between 8130 and 8131 Ntima/Igoki

ii. Zaituni Bakari 0.06 ha of land Ntima/Igoki/8125 and 0.03 ha access road

iii. Zuhura Bakari 0.04 of land as she is getting the front shop bordering the tarmac road from Ntima/Igoki/8121.

The first objector submitted the land allocated to the petitioner as per surveyors' report was 0.027 ha comprising of the land he is occupying and the one he had sold to third parties. He submitted that since each son of the deceased was to get 0.22 ha the petitioner should relinquish 0.05 ha to Asha Bakari so that each son gets equal portion. He further submitted the other son Asman Bakari is occupying 0.23 ha and should therefore relinquish 0.01 to Asha Bakari so that his share comes to 0.22 ha and that of Asha Bakari to be 0.06 ha and 0.05 from Zaid Bakari. He submitted that to affect the suggested transfer all title deeds in custody of the petitioner and Zaid Bakari and Asman Bakari should be called back, be ordered cancelled so as to effect proposed distribution. He submitted the portion of Asha Bakari should be between plot No.8130 and 8131 Ntima/Igoki. He further submitted the proposed change of road of access was not agreed upon and that no family consent was ever sought when the petitioner was subdividing the land into various portions.

The 2nd objector in his submissions dated 18th March, 2014 is in agreement with the petitioner and 1st objector as regards the deceased beneficiaries and properties. She has associated herself with the submissions by 1st objector as regards distribution but has added that Said Bakari, the petitioner and Asman Bakari have sold out some of their shares as captured in the 1st objector's submissions which has been factored in the proposal of distribution by the 2nd objector. The 3rd objector in her submissions dated 19th February, 2014 associated herself with submissions by 1st and 2nd objectors.

Section 29(a) of the Law of Succession Act defines "dependent" to be:-

For the purposes of this Part, "**dependent**" means-

(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;

(b) Such of the deceased's parents, step-parents, grand-parents, Grandchildren, step-children, children whom the deceased had taken into his family as his own, brothers and sisters, and half-brothers and half-sisters, as were being maintained by the deceased immediately prior to his death; and....."

On the other hand Article 27(1) and (4) of the Constitution of Kenya, 2010 states that every person is equal before the law and has the right to equal protection and equal benefit to the law and forbids discrimination on ground of sex or marital status.

The said Article states:-

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, colour, age, disability, religion, conscience, belief, culture, dress, language or birth.

(5) A person shall not discriminate directly or indirectly against another person on any of the grounds specified or contemplated in clause (4)."

In view of the provisions of the Law of Succession Act and the Constitution of Kenya, I find and hold the three sons and three daughters of the deceased to be all dependants to the deceased estate and are entitled to equal protection and benefit to the deceased estate. I have carefully analyzed the proposals by the petitioner, 1st objector, 2nd objector and 3rd objector. The objectors are in agreement to the mode of distribution and opposed to the petitioner's proposal. The petitioner's proposal has not taken into account the portions already in his name and his brother Asman Bakari. The portion they had sold and benefited themselves. The petitioner's proposal if adopted will disinherit the other 4 beneficiaries and especially the two sisters who are married and would be discriminated on the grounds of their marital status. The

constitution do not allow discrimination of the children on the ground of sex or marital status. The petitioner has forgotten that it is constitutional right for his sisters to be married also. That marital status should not be used as a basis to disinherit a girl child because she is married. I find that the petitioner's proposal which purports to deny his sisters their rightful shares because they are married to be unconstitutional and against the spirit of the Constitution and provisions of the Law of Succession and I reject the same. The petitioner further intends in his proposal to change the original mutation form dated 20/11/86 so as to change the road of access. That if this proposal is allowed it will pass through seven (7) family graves and disturb the family departed souls. This is not justified as it is intended not to benefit any one but to serve the interest of the petitioner, and his brother Asman Bakari and cause disturbance to other beneficiaries.

Having considered the four proposals I find the proposal by the 1st Objector, 2nd and 3rd objectors to be in agreement with each other, to be fair and reasonable as the same would ensure justice to all beneficiaries as it would ensure equitable distribution to all beneficiaries. I will therefore adopt the elaborate proposal by 1st, 2nd and 3rd objectors.

The upshot is that the deceased estate shall be shared as per Objectors proposal and I would make the following orders:-

1. All title deeds arising out of subdivision of Ntima/Igoki/1231 and registered in the names of Zaid Bakari and Asman Bakari are hereby cancelled and the same reverted to the name of the deceased herein Bakari Juma.

2. That each of the deceased sons Mohammed Bakari Asman Bakari and Zaid Bakari shall each get 0.22 ha and all their works should be considered during sub-division or reduction or adjustment of their respective portion.

3. That each of the three daughters Asha Bakari, Zaitun Bakari and Zuhura Bakari to be allocated share as follows:-

i. Asha Bakari – 0.06 hectares of land between Ntima/Igoki/8130 and 8131.

ii. Zaituni Bakari- 0.06 hectares from Ntima/Igoki/8125 and a road of access of 0.03.

iii. Zuhura Bakari – 0.04 ha of land being front shop bordering tarmac road along Ntima/Igoki/8121.

4. The road of access to be as per the original mutation dated 20/11/1986.

5. As all parties are brothers and sisters I direct that each party do 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. L.Kimathi for petitioner

2. Mr. G. G. Mugambi for 1st objector

3. Mr. Muriuki for 2nd objector

4. 3rd objector in person.

J. A. MAKAU

JUDGE