



**IN THE HIGH COURT OF KENYA**

**AT NAKURU**

**SUCCESSION CAUSE NO.389 OF 2008**

**IN THE MATTER OF THE ESTATE OF KAMAU MANDA (DECEASED)**

**LILIAN CHEMUTAI.....PETITIONER**

**VERSUS**

**EUNICE NDUTA KAMAU.....1<sup>ST</sup> PROTESTOR**

**MARGARET WANJIKU NGIGI.....2<sup>ND</sup> PROTESTOR**

**JUDGMENT**

When petitioning for the grant of the estate of the deceased, Kamau Manda, the petitioner, Lilian Chemutai indicated that the deceased was survived by her, the widow and four children – two sons and two daughters. An objection to the making of a grant has been raised by Eunice Nduta Kamau (the 1<sup>st</sup> objector) and Margaret Wanjiku Ngigi (the 2<sup>nd</sup> objector) claiming that they too are widows of the deceased. They have filed an answer to the petition as well as a petition by way of cross application for a grant. It is their contention that the deceased died intestate and was survived by three widows, the petitioner and the two objectors together with 13 children; that the petition was filed without the objector's knowledge; that they, together with their children are entitled to the estate; that the petitioner has not made full disclosure of the entire estate; that if granted letters of administration, the petitioner will disinherit the other dependants.

The petitioner has denied these averments in her reply maintaining that she is the sole widow; that the deceased, during his lifetime distributed and transferred to her NYANDARUA/UPPER GILGIL 8, NAKURU MUNICIPALITY BLOCK 7/232 AND 7/233; that the objectors and the alleged dependants never depended on the deceased and only surfaced upon the death of the deceased; that the petitioner was married to the deceased under the Marriage Act. The petitioner further avers in her reply that if at all the objectors were married to the deceased, they ceased living together several years. Finally she states that the deceased left a written will in which he expressed his wish on the distribution of the estate.

I have considered these averments as well as written submissions on behalf of the two sides. Starting with the last issue, (of the will) there is no confusion that this cause has been brought as an intestate cause. The purported will appoints the deceased's sister Nyakaruru d/o Manda or in the alternative the brother, Ngugi s/o Manda as executors. None of them has brought this cause. Secondly, the purported will has not been witnessed as required by **section 11(b)** of the **Law of Succession Act**.

Turning to the grounds of objection, the Chief, Nakuru Town Location in a letter dated 11<sup>th</sup> April, 2008 in support of the petition stated that the deceased person's first wife left the matrimonial home in 1975. He however, does not make any reference to the 2<sup>nd</sup> objector. But that confirmation of the existence

of a first wife goes to buttress the 1<sup>st</sup> objector's claim. In addition, the 1<sup>st</sup> objector has exhibited 2 copies of certificates of birth in respect of two of her children in which the deceased is named as the father. She has also exhibited copies of family photographs of her, the deceased and other people said to be family members.

Finally, there is a copy of a sale agreement between one Meshack Kipkurui A. Rono on the one part and both the 1<sup>st</sup> objector and the petitioner on the other part. The agreement is in respect of purchase by the two of them of 100 shares in the Kalenjin Enterprises Limited. This fact also goes to show that there was a relationship between the two.

Turning to the 2<sup>nd</sup> objector, she has annexed to her affidavit a photograph purported to be of her and the deceased. Being a photocopy of a photograph taken half way, it may not have any probative value. She has also a translation of a document purporting to be an acknowledgement of dowry payment. Without the original, that document again, is not relevant. Finally, she has exhibited a copy of a certificate of birth in respect of one Lydiah Njeri in which the deceased is named as the father.

Whereas most of the issues raised in this matter are matters which require production of evidence, *prima facie*, I am satisfied in the case of the 1<sup>st</sup> objector that she was a dependant together with the two children whose birth certificates have been produced. For that reason, she was entitled to petition for the grant of letters of administration.

With regard to the 2<sup>nd</sup> objector and subject to further evidence, I find no *prima facie* evidence that she was married to the deceased. However, in the interest of Lydiah Njeri, shown to be deceased person's child, cross application succeeds and I order that a grant be issued to the petitioner and the objectors jointly.

I note finally that the only assets with contention are:

- (a) NYANDARUA/UPPER GILGIL 8
- (b) Motor vehicle Registration No.KKQ 219 Datsun Pick up
- (c) Livestock and
- (d) Trees.

I make no order as to costs.

**Dated, Delivered and Signed at Nakuru this 10<sup>th</sup> day of February, 2011.**

**W. OUKO  
JUDGE**