



REPUBLIC OF KENYA.

IN THE HIGH COURT OF KENYA

AT KITALE.

SUCCESSION CAUSE NO. 51 OF 2002.

IN THE MATTER OF THE ESTATE OF MUKHEBI SICHULULU.....DECEASED.

VERSUS

HENRY L. WEKURO.....APPLICANT.

J U D G M E N T.

1. The deceased **Mukhebi Sichululu** died on 22nd April, 2002 at Namanjalala Sub location within Trans Nzoia. Henry Lokewa Wekuro describing himself as the brother of the deceased petitioned for the Letters of Administration on 18th June, 2002. According to the affidavit in support of the petition, the deceased was survived by four sons namely:-

(1) Gabriel Mulongo Mukhebi.

(2) Isaac Wanyonyi Mukenda.

(3) John Simiyu Mikhebi.

(4) Patrick Mukhwana Mukhebi.

2. The assets of the deceased were listed as one plot being plot No. 11 Emuru Farm. A grant of letters of administration was issued to the petitioner on 24th July, 2003. The petitioner applied for confirmation of grant on 26th January, 2004 in which he sought the deceased's plot No. 11 be shared between **John Nguju Kamau** to take 2 1/2 acres, **John Simiyu Mikhebi** and **Patrick Mukhwana Mukhebi** to share 2 1/2 acres. The grant was confirmed on 29th January, 2004. On 16th September, 2004 **Nicholas Mukhebi** a son of the deceased filed a summons for revocation of grant, on the grounds that the administrator is a stranger and the family of the deceased did not give their consent. The applicant complained that his name and those of his brothers who were sons of the deceased were not included. Further there was no agreement to distribute the deceased's property by way of a sale to a stranger.

3. This summons for revocation was heard partly heard by **Justice Ochieng** who took evidence from the applicants. I recorded the evidence of the petitioner, **Henry Lokewa Wekulo** testified that he is the brother of the deceased. The deceased was

married to 2 wives namely Esther Nabwala, who was the 1st wife and his mother, the 2nd wife Veronicah Nasike passed away and she was survived by 7 children. When his brother died, he had a parcel of land at Goseta farm being plot No 11 Emuru Settlement Scheme and by the time the deceased passed away, he had not subdivided his estate. According to the petitioner, Ester, the 1st widow of the deceased used to live at cherangani.

4. According to the applicant, he is the son of the deceased and was not consulted when the petitioner petitioned for letters of administration. He contended that his consent was never sought by the petitioner. Moreover there was no agreement that his father's estate should be distributed to a stranger. **John Simiyu Mukhebi** also gave evidence to support the applicant's case. He is the brother of the applicant and he confirmed that no authority was given to the petitioner who is merely a member of their father's clan to apply for the letters of administration. Moreover their consents were never obtained and according to the Bukusu Traditions, the deceased parcel of land should have been shared between the 2 houses. This witness denied that any authority was given to sell the deceased property to a 3rd party.

5. After the burial of the deceased, the petitioner told the court that he called a clan meeting who appointed him as the trustee of his brother's estate. This was according to the *luhya* customary law. There was a dispute between the 1st and 2nd houses over the distribution of the deceased parcel of land. The area chief advised the petitioner to resolve the matter, and that is when he sat with the clan members and agreed the deceased parcel of land should be divided into two equal portions and each widow to hold the share for their children.

6. The petitioner seemed confused and this fact is also acknowledged by his counsel's written submissions. The petitioner denied having petitioned for the letters of administration. When the deceased passed away, the family members held a meeting which chaired. It was agreed that a loan of Ksh. 18,000/= owing to the Settlement Fund Trustee should be paid by the sons of the deceased but it was only Gabriel who paid. The deceased's land was shared among the 2 wives according to the *luhya* customs. **Mr. Wanyonyi**, learned counsel for the petitioner urged the court to dismiss the application for revocation because the deceased's assets were distributed to the 2 houses according to the provisions of section 40 of the Law of Succession Act.

7. There is no dispute that the deceased was survived by 2 houses and several children. Indeed according to the letter written by the chief of Kaisagat location the deceased was survived by 2 wives and the following children:-

1st Wife Esther Nabwala aged 98.

(1) Nicholas Jefether Mukhebi.

(2) Kaitano Sichululu Mukhebi.

(3) Gabriel Mulongo.

(4) Isaac Mugenda.

(5) Agnes Nekesa.

(6) Lugelicia Nanjala.

(7) Sabina Nelima.

(8) Rosemary Naliaka.

2nd Wife Veronica Nasike - Deceased.

(1) John Simiyu Mukhebi.

(2) Patrick Mukhwana.

(3) Martin Wanyonyi.

(4) Peter Wafula.

(5) Michael Nato.

(6) Annah Mulongo.

8. Going by the pleadings on record, it is obvious that all the beneficiaries of the deceased did not give their consents to the petitioner to apply for the letters of administration. The petitioner was also not entitled in the same degree as the applicant to apply for the letters of administration. The applicant is the son of the deceased and no reasons were given why the petitioner deemed it fit to apply for letters of administration of the deceased's estate without a written authority by those ranked in priority by the law of succession. Under section 66 of Law of Succession Act, the preference to be given to a person to be appointed to be an administrator is provided for, and the applicant ranks in priority to the petitioner. No wonder in his evidence the petitioner denied that he applied for the letters of administration.

9. I find there is merit in the application for the revocation of the grant which did not comply with the provisions of the law. I order the grant be revoked and fresh grant be issued to a representative of the 1st and 2nd house. The one asset of the deceased namely plot No. 11 Emuru Settlement Scheme should be shared equally amongst the surviving children of the deceased in equal shares taking into account the 2 windows. The matter may be mentioned within a period of 14 days to enable the parties provide to the court the agreed names of two persons to be appointed as administrators of the deceased's estate representing the 2 houses.

Ruling read and signed this 22nd day of September, 2011.

MARTHA KOOME.

JUDGE.