



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT KAKAMEGA
Succession Cause 275 of 2003

IN THE MATTER OF THE ESTATE OF WANYAMA NDOMBI DECEASED
A N D
CHRISTINE MAKOKHA WASWA PETITIONER
V E R S U S
FREDRICK WEKULO WANYAMA OBJECTOR

J U D G E M E N T

Wanyama Ndombi died on 27th August, 1991. He was survived by Zaina Wanyama Ndombi (widow), Fredrick Wekulo Wanyama – son, Charles Sikuku (son - objecting), Christine Makokha Waswa (daughter – petitioner), Joseph Buluma Wanyama (son, now deceased), Zainabu Ofwera – (daughter), and Wakhuma Wanyama – (daughter). The petitioner filed this Succession Cause and was issued with a grant of letters of administration intestate on 14th October, 2003.

The objector filed his objection proceedings on 5th April, 2004 and the petitioner filed her application for confirmation of grant on 21st May, 2008. Mr. Ombaye appeared for the petitioner while Miss Andia appeared for the objector. Parties agreed to have the matter proceed by way of affidavit evidence.

In the application for nullification of the grant, the objector contends that the grant was obtained fraudulently and that the petitioner concealed material facts to the court. He contends that the deceased left plot numbers **BUNYALA/SITIKHO/635** measuring 6 acres, **BUNYALA/SIRIGOI/11** measuring 5 acres and **BUNYALAL/SITIKHO/644** measuring 2 acres. The Objector further states that the petitioner was born out of wedlock and is currently married hence not entitled to inherit as per the Bunyala customary law. The objector's mother who is the deceased's widow was not consulted when the cause was filed yet she ranks first in priority to the petitioner.

In her replying affidavit sworn on 21st October, 2004, the petitioner states that the deceased was survived by the beneficiaries indicated therein. The petitioner's mother, **MAJUMA NDOMBI** is deceased and was the deceased's first wife. The petitioner annexed minutes of clan elders who permitted her to inherit two (2) acres from the deceased's estate. The petitioner proposes to distribute the estate as follows:-

- (a) BUNYALA/SIDIKHO/635 – Zainabu Walekhwa Buluma – 2.0 Ha.
- (b) BUNYALA/SIRIGOI/119 - 2.0 Hectares
 - i) Objector - 3 acres
 - ii) Petitioner 2 acres
- (c) BUNYALA/SIDIKHO/644 - Charles Were Shikuku – 0.6 Hac.

From the proceedings herein the only issue for determination is whether the petitioner is entitled to inherit and how the estate should be distributed. The objector states that the petitioner was born out of wedlock and that she is currently married. Under the Law of Succession Act, that contention does not disqualify the petitioner from inheriting the deceased's estate. Section 3 of the Act allows children

born out of wedlock to inherit. The allegation that the petitioner was born out of wedlock is also not proved by documentary or independent evidence.

With regard to the Bunyala customary law to the effect that married daughters do not inherit their fathers, no evidence in form of expert opinion was produced. Indeed the petitioner annexed minutes by members of the Bunyala clan allowing her to inherit two acres. I do therefore find that the petitioner is a proper beneficiary of the deceased and is entitled to inherit the deceased's estate.

The petitioner is seeking to inherit **two (2)** acres from the estate. According to the objector, the total acreages of the estate is thirteen (**13**) acres. The petitioner is from the first wife who is now deceased. The rest of the beneficiaries are the children of the 2nd wife, Zaina Wanyama Ndombi. Since the petitioner is seeking 2 acres and this is the portion she was awarded by the clan members, I find that the proposed share for the petitioner is reasonable and the same is granted.

The objector has not indicated how he intends to have the estate distributed. I do order that the grant herein be confirmed. The petitioner to get **two (2)** acres out of plot number **Bunyala/Sirigoi/119**. The rest of the estate namely plot numbers **Bunyala/Sidikho/635**, **Bunyala/Sidikho/644** and the remaining portion of plot No. **Bunyala/Sirigoi/119** to be registered in the name of the widow, **Zaina Wanyama Ndombi** who shall in turn distribute to her children. The objection herein is dismissed with no orders as to costs. Orders accordingly.

SAID J. CHITEMBWE

J U D G E

Delivered, dated and counter-signed by the Hon. Justice Isaac Lenaola at Kakamega this 15th day of April, 2010

ISAAC LENAOLA

J U D G E