



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KITALE
SUCCESSION CAUSE NO. 140 OF 2009

IN THE MATTER OF THE ESTATE OF ELEKWEL NAMUYA (DECEASED)
AND
SAMSON LOKWARE NAMUYA (APPLICANT)
AND
LOCHABEL AMURON AMOYAA (OBJECTOR)

RULING

1. The late **Elekwel Namuya** (hereinafter referred to as deceased) passed away on 21st August, 1995 at the age of 71 years old. On 29th June, 2009 **Samson Lokware Namuya** petitioned for letters of Administration while describing himself as the only son of the deceased. On 5th November, 2009, **Lochabel Amuron Amoyaa** objected and cross petitioned for the letters of administration. Directions were given by **Ombija J** on 15th July, 2010 that the chief of Chepchoina Location should attend court for the hearing on 28th October, 2010.
2. This matter came up for hearing before me, on 28th October, 2010, the objector gave evidence and also relied on the evidence of **Alekedio Namuye(OW2)** the younger brother of the deceased. According to the objector, he has lived at Kologa farm since 1979 (on deceased parcel of land) when he relocated from Lodwar and started living with the deceased who is his father. The objector testified that he was born in 1962 at Lodwar. Unfortunately his mother the late **Asuroi Elekwel** died when he was very young and he was brought up by an uncle.
3. When the objector grew to be a young adult, he started asking for his father until when he traveled to Kitale and met his father in 1978. He testified that the deceased received him well as a son and gave him a portion of the land at Kologa Farm. The deceased was also married to the mother of the petitioner. The objector confirmed that the petitioner is also the son of the deceased but his sister **Mary Namuya** was not the deceased's biological child.
4. The evidence by the objector was supported by that of **Alekedio Namuye (OW2)** the brother of the deceased. He testified that the deceased was married to the objector's mother and his family paid dowry comprising of 70 herds of camel to the family of the objectors mother. However, the objector's mother died when the objector was only one month old and he was brought up by an uncle. By that time the deceased had migrated to look for work in Kitale and re-united with the objector whom he settled at his Kologa farm. When the deceased re-located to Kitale, he married the mother of the petitioner but this witness confirmed that Mary was not the daughter of the deceased because Samson's mother was married when she was already born. He confirmed that the deceased had sold 1 ½ acres before he died and he urged the court to distribute the balance of the land between the petitioner and the objector.
5. The petitioner also gave evidence and told the court that he is the only son of the deceased and he has a sister called Mary who also gave evidence to support the petitioner. The petitioner denied that the objector is his brother but a total stranger who is a mere member of the deceased clan. He testified that the objector came to their home after the deceased passed away and it is the petitioner who accommodated

the objector who is now demanding inheritance.

6. The petitioner's evidence was supported by **Mary Itekwel Namuye** (PW2) she acknowledged the objector as a member of the deceased clan who came and settled on their land after the deceased passed away. She claimed that it is the petitioner who accommodated the objector. This witness denied that she has ever seen OW 2 but during cross examination, she admitted that he is the deceased brother who used to come to Kologga farm during the deceased life time.

7. The issue for determination in this objection proceeding is who to issue the grant of letters of administration among the petitioner and the objector. The issue of whether the objector is the son of the deceased should also be determined. The objector gave evidence and was supported by OW2, the deceased's brother. The petitioner who denied that the objector is the son of the deceased was only supported by his sister. The evidence of PW2 lacks credibility apart from the fact that she is younger than the objector, she also contradicted herself when she testified during her evidence in chief and denied knowledge of OW 2. Later in cross examination, she admitted that OW 2 was the deceased brother and used to visit them at Kologga farm.

8. Another important factor is petitioner was ordered to avail the chief who wrote the letter dated 10th June, 2009 that introduced him to court as the only child of the deceased. That letter is contradicted by another one written on 3rd November, 2009 by another assistant chief. All these lapses in the petitioner's case create doubt on the credibility of the petitioner's evidence that the objector is not the child of the deceased. What is clear from the evidence is that the objector has been living on the deceased's parcel of land where he occupies one acre. There is no contention that the petitioner is the child of the deceased.

9. However the and OW2 were categorical PW2 was not the child of the deceased but was born out of wedlock. Whatever the case that may be the deceased married the petitioner's mother and brought up PW2 as his child, she is a dependant of the deceased within the meaning of the provisions of section 29 of the Law of Succession Act. That meaning also covers the objector. Even if he wasn't the biological son of the deceased, the deceased took him as his own child and maintained him prior to his death by allocating him an acre of land.

10. Accordingly, the letters of administration in respect of the deceased's estate should be issued to the petitioner and the objector to jointly administer the estate of the deceased. The two administrators will be at liberty to apply for the confirmation of grant either jointly and severally. During the hearing, it emerged that the deceased's assets comprises of a 5 acre plot being plot No. 12 Twiga Settlement Scheme. It also emerged that the deceased had sold 1 ½ acre during his lifetime.

11. Thus the administrators should take into account the portion that the deceased had sold. The objector should be given one acre where the deceased settled him and the balance should go to the petitioner to hold in trust for himself and his sister **Mary Namuya**. In the event that the sister is not interested, she can give the requisite consent for the petitioner to take the balance of the plot. Each party shall bear their own costs this being a succession matter.

Ruling read and signed on 19th day of November, 2010

MARTHA KOOME
JUDGE