



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT EMBU

Succession 286 of 2002

IN THE MATTER OF THE ESTATE OF LADISRAO NGONDI KUGERIA...DSD

ANYESI NGAI NGONDI.....PETITIONER

VERSUS

CECILIA MUTURI NGONDI.....OBJECTOR

JUDGMENT

This suit is regarding the succession of Ladisrao Ngondi Kugera. The application before the court is for hearing the protest against the confirmation of grant issued to Anyesi Ngai Ngondi Petitioner and Cecilia Muturi Ngondi, Protester. The protester states that she is a co-wife of petitioner having been married to the deceased with whom she had had six children 3 sons and 3 daughters and the proposed distribution of the estate by the petitioner does not include them.

It is to be noted that in the letter received in court from the chief of Riandu location it is confirmed that the petitioner was the only wife of the deceased.

At the hearing of evidence the protester called four (4) witnesses. In her evidence she testified that she was married in 1970 under Mbeere Customary Marriage. She said she found the petitioner in the home. She was residing in the same compound with the petitioner and she came to know as the children were born. After deceased died petitioner pushed her out. The home where they were residing was burnt at night. So she was cultivating on her sister's land. She left her children to the paternal grandfather in 1990. The deceased died in 1997. Her children are not listed among the beneficiaries. Her witness PW2 is the deceased brother who testified that the deceased was married to protester and to Petitioner. He confirmed that the protester had given birth to 6 children of the deceased. He further testified that the two wives disagreed after death and there was dispute about signing of death papers. Two of the sons of protester were named after the witness and father of deceased. That the sons were building houses on a piece of land but that the houses were demolished by relatives of Petitioner.

He further testified that the two women were wives of his deceased brother and their children all fathered by his brother. In cross-examination he said that the chief's letter which states Anyesi is only wife was collected from the chief by Anyesi.

PW3 was also a brother of deceased and he said all children are entitled to inherit.

PW4 was also conversant with the case. He said both women are wives of deceased. One petitioner

was married in church and protester Cecilia was married under customary law and added that the whole clan agrees to that. That was close of protesters case. The petitioner simply said she was the only wife of deceased. She was married in church and she exhibited her marriage certificate. This issue is not disputed. She denied that the protester is a co-wife. Petitioner witness number 2 was the best woman of deceased at petitioners wedding.

As I have stated there is no dispute about petitioner's marriage. The main issue to be decided is therefore whether the protester was a wife of deceased and if so, is she and her children entitled to inherit the assets of deceased? The Succession Act Cap. 160 Section 3 subsection 5 the Act was amended. By Act 10 of 1981 the provision stating "Notwithstanding the provisions of any other written law, a woman married under a system of law which permitted polygamy where her husband has contracted a previous or subsequent monogamous marriage to another woman nevertheless, a wife for the purpose of this Act and in particular Section 29 and 40 thereof and her children are accordingly children within the meaning of this Act."

The law of marriage in this country was enacted for African Christians prescribing the manner Africans may conduct their personal affairs according to Christian principles but the personal law of Africans that is tribal customary laws of various ethnic groups was never enacted. Therefore most Africans continued being bound by customary law in personal matters of birth marriage and death. The African Christian Marriage Act Cap 151 Laws of Kenya was enacted in 1931 to provide for marriage of African Christians and for the dissolution of such marriages. It freed African woman marriage under statute from constraints of customs in widowhood for example marriage to her husbands relatives but she shall have the same right to support for herself and her children of such marriage from such brother or relative as she would have had if she had not been married under the said Act. She shall be the guardian of her children so long as he remains a Christian.

On the issue of custom of paying bride price the same shall be paid on demand to such person as is entitled thereto by law and custom. Therefore it is to be seen that the purpose of the two pieces of legislation is for very different purposes. Matrimonial laws are to protect the status of Christian marriage and Christian way of life while the Succession Act is intended to provide for inheritance of survivors in the estate of deceased and all are included without any restrictions that may be attached by way of religion.

I therefore allow the protest and order the two wives petitioner and protester to be involved in distribution together with their children.

No order as to costs.

Dated this 10th April, 2008.

J. N. KHAMINWA

JUDGE

10/4/2008

Khaminwa – Judge

Solomon –Clerk

MR. Utuku present

Anyesi – present

Read in open court.

J. N. KHAMINWA

JUDGE