



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT ELDORET

Prob & Admin Cause 106 of 2001

IN THE MATTER OF THE ESTATE OF GIDEON WEKESA WEBI

J U D G E M E N T

DR. GIDEON WEKESA WEBI the deceased in this cause died on 17th January 2001. He died intestate. His wife **SELPHA OLIVIAN WEKESA** petitioned this court on 26th April, 2001 for a grant of Letters of Administration over his estate. In paragraph 4 of form P&A.5 she showed the following as the persons who survived the deceased:-

- a) *SELPHA OLIVIAN WSEKESA - WIFE*
- b) *VINCENT MUVUALO WEKESA - SON*
- c) *VIVIAN MUSUYA WEKESA - DAUGHTER*
- d) *CATHERINE AKWABA WEKESA - DAUGHTER*
- e) *VIOLA REBBECA WEKESA - DAUGHTER*
- f) *CLARENCE WEBI WEKESA - DAUGHTER*

On 12th July, 2001 the court issued a grant in the joint names of Shelpia Olivia Wekesa (the petitioner) and Vincent Munialo Wekesa her first son. However on 11th April 2002 **KENNEDY MARAGA WEKESA** filed an application seeking the grant issued to be revoked. However that application was withdrawn and another one filed on 10th July, 2002. In the application Kennedy alleged that:-

- “a) The grant was obtained by concealment from the court of something material to the case.**
- b) The grant was obtained by means of untrue allegations of fact essential in point of law to justify the grant notwithstanding that the allegation was made in ignorance or inadvertently.**
- c) The person to whom the grant was made failed without reasonable cause to apply for confirmation of the grant within one year from the date hereof or such longer period as court has ordered or allowed.**
- d) That the respondent be condoned to pay costs of this application.”**

The petitioner applied on 23rd July 2002 to have the grant confirmed showing the mode of distribution. The name of the objector was not shown as one of the beneficiaries. In essence the objector was complaining that the Petitioner failed to disclose to court that he too was a son of the deceased and

therefore a dependant entitled to a share of the estate.

On 20th July 2004 the petitioner through her advocate informed court that she concedes that the objector was a son of the deceased. On 9th November, 2004 parties recorded the following consent order:-

“By consent the objector be considered as one of the dependants of the deceased and there would be no need for them (sic) to take out grant. That the distribution of the assets be considered by court by way of viva voce evidence by the petitioner and the objector. The petitioner accounts for benefits earned by the deceased.”

Thereafter the matter proceeded for hearing on mode of distribution. The parties also filed affidavits each showing how the assets should be distributed.

The objector in his affidavit indicated that he should be given 3 acres of plot SANGO NO.779 while Vincent Munialo and Clarene Webi Munialo get 2 ½ acres and 2 acres respectively. In his evidence in chief the objector retaliated that he only wanted a share of land **KAKAMEGA/SANGO/779** which is 7 ½ acres. He said the plot in Kimumu and motor vehicle and plot at mawe tatu can go to the petitioner who is his step-mother. He said that he and his two stepbrothers should get 1 ½ acres each of the land and the step- sisters to get ½ acres each and the stepmother to get one acre.

The petitioner filed what she called affidavit of protest on 18th September, 2006. This I believe was in response to the objector’s affidavit in support of mode of distribution filed on 26th June, 2006. In her affidavit she acknowledged the objector as one of the sons of the deceased. As for distribution of the estate she indicated that land **KAKAMEGA/SANGO/779** be shared out herself getting 3 ½ acres and all the other children including the objector to get ½ acre each. However in her evidence in chief she changed her stand and said that objector was not a son of the deceased. She said she should get ½ of the land in Sango and the other half she shares to her children excluding the objector. She told court that she borrowed Shs.20, 000/= from mwalimu SACCO which went towards purchase of the said land and that is why she wanted to get ½ share of the land.

I have considered the evidence in detail. It seems that the objector abandoned his prayer for revocation of the grant when they entered into consent that he be recognized as one of the dependants. However even if he did not abandon the prayer for revocation there was no evidence that the proceedings to obtain the grant were defective. True petitioner did not include the objector as a dependant but that issue was resolved by their consent order. In any case there were no doubts that the petitioner **SELPHIA OLIVAH WEKESA** was the legal and only wife of the deceased. Deceased had no other wife. The deceased died intestate. S.66 of Laws of Succession Act gives court discretion as to who to appoint and grant Letters of Administration but also gives some guidelines on how to reach such a decision. It is clear from the provisions of that section that the spouse had the first priority to be granted Letters of Administration. The granting of Letters of Administration to the petitioner therefore was proper and court therefore declines to revoke that grant.

Parties recorded a consent order whereby objector was recognized as one of the dependant of the Estate and the hearing proceeded on basis of distribution only. Thus the petitioner’s evidence that the objector was not a son of the deceased was neither here nor there. That fact was settled by the consent order recorded. That consent order was never set aside and it therefore still stands. In any case there was ample evidence that objector was a son of the deceased.

The only bone of contention is the sharing of land **No.KAKAMEGA/SANGO/770** which court was told was 7 ½ acres. There was agreement that petitioner do inherit Kimumu and Mawe Tatu plots and also the motor vehicle. The petitioner also took the deceased’s benefits from Egerton University which she said they were Shs.300,000/=.

It is clear that the Petitioner may have contributed to purchase of the land in Sango. She said she got a loan of Shs.20,000/= which she gave to her husband. The land however was registered in the deceased’s name despite the contribution by the petitioner. That is why the petitioner claims for 3 ½ acres of the

land. However this is not a matrimonial property dispute. Though the petitioner may have contributed to the purchase the property is in the name of the deceased and is part of his Estate. It therefore should be shared equally among all the beneficiaries the daughters included. The land is said to be 7 ½ acres. Each of the seven dependants should get one (1) acre. The remaining ½ acre should go to the objector. This is because the petitioner took all the deceased's employment benefits. I believe her children must have also benefited from those benefits. The objector did not get anything from those benefits. He was the first born son but from a different mother. That is why I feel it is fair and proper for him to get 1 ½ acres as the others get one acre each.

In the circumstances I confirm the grant issued on 12th July, 2001. The deceased's assets to be distributed as follows:-

1. Land No. KAKAMEGA/SANGO/770
 - a) Selpha Olivia Wekesa - 1 acre
 - b) Kennedy Maraka Wekesa - 1 ½ acres
 - c) Vincent Munialo Wekesa - 1 acre
 - d) Vivian Musuya Wekesa - 1 acre
 - e) Catherine Akwaba Wekesa - 1 acre
 - f) Viola Nafula - 1 acre
 - g) Clarence Webi Wekesa - 1 acre
2. UG/KIMUMU/1636 - Selpha Olivia Wekesa
3. Motor Vehicle KAB 970W – Selpha O. Wekesa

Each party will bear his/her own costs.

Dated and Delivered at Eldoret on 8th day of April, 2008.

KABURU BAUNI

JUDGE

IN THE PRESENCE OF:-

C/C - David

Mrs. Kirui holding braief for Onyinkwa for petitioner

Mr. Nabasenge for Wanyonyi for objector

KABURU BAUNI

JUDGE