



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAKURU

Succession Cause 75 of 2002

IN THE MATTER OF THE ESTATE OF PETER CHEGE RUHANGI

(DECEASED)

LM.....APPLICANT

VERSUS

J N C.....1ST RESPONDENT

J R C.....2ND RESPONDENT

JUDGMENT

Peter Chege Ruhangi died on the 15th of June 2000 at Molo District Hospital. After his death, his two sons, J RC and J N C (*hereinafter referred to as the petitioners*) applied for the letters of administration intestate to administer the estate of the said P C R (*hereinafter referred to as the deceased*). In the papers filed in court, the petitioners identified themselves as the sole dependants and beneficiaries of the estate of the deceased estate. They identified the properties that the deceased owned as:

- (i) Title No. Mau Summit/Molo Block 5/161 (Motto)
- (ii) Title No. Mau Summit/Molo Block 5/144 (Motto)
- (iii) Title No. Mau Summit/Molo Block 5/491 (Motto)
- (iv) Title No. Molo South/Ikumbi Block 3/151

The petitioners were duly issued with the letters of administration. Before the said letters of administration could be confirmed, L M(*hereinafter referred to as the objector*) filed objection proceedings under **Section 76 of the Law of Succession Act**. She prayed that the letters of administration issued to the petitioners be revoked or annulled on the grounds that they were fraudulently obtained. The objector deponed that the petitioners had concealed the fact that she had been married to the deceased and had been blessed with several children with the deceased.

Directions were taken under **rule 44 of the Probate and Administration Rules**. The parties to these proceedings agreed to adduce viva voce evidence before court for the purposes of determining the issues in dispute.

During the hearing of objection proceedings, the objector gave testimony in support of her case. The 2nd

petitioner James Njuguna Chege testified on behalf of the petitioners. The petitioners called one other witness, Paul Mwaniki Wachira. After hearing both the objector's and the petitioner's evidence the issues for determination that came to the fore were as hereunder;

(i) Was the objector married by the deceased? If so, is she therefore a beneficiary of the deceased's estate?

(ii) If the answer to (i) above is yes, what mode of distribution of the deceased's estate should be adopted?

According to the objector she was the third wife of the deceased. She testified that she got married in the year 1983. Her marriage to the deceased was blessed with six children; J N born in 1981, E K C born in 1983, MW born in 1985, E N born in 1987, J R born in 1989 and L W born in 1997.

She testified that she was married under the Kikuyu Customary Law. She testified that during her marriage the deceased paid one donkey and two cows as dowry. He also paid a sheep to signify that he had adopted her first born child – J. The objector acknowledged that her first born child had not been sired by the deceased but had been adopted upon her marriage. She testified that after her marriage to the deceased, she lived with the deceased and his other wife called Elizabeth Njeri Chege in their 11/4 acre plot at Moto Farm. It was her testimony that the three of them live together in harmony. She further testified that the wife of the deceased called E N C was not blessed with any children. At some point in time during her marriage, the objector left three of her children with the deceased and his wife, E and moved to the deceased's five acre farm at Moto Farm in Molo. The objector denied that she had been married to the deceased's wife (*E NC*) to sire children for her as the said E was childless. She insisted that she had been married to the deceased and was therefore entitled to inherit part of the deceased's estate. She testified that an attempt was made to have the matter arbitrated upon by the local administration in vain. It was her further testimony that after the deceased had passed away, the petitioners, who were the children of the deceased's first wife called H M (*who had died in the 1950's*) chased her away from her matrimonial home at the 11/4 acre land. She testified that she was currently residing on part of the five acre parcel of land belonging to the deceased at Moto Farm. She admitted that whereas the deceased and his other wife, E N C were buried in the 11/4 acre farm, one of her children who had died was buried in a public cemetery at Moto Farm. The objector urged the court to distribute the properties of the deceased equally to the two families which the deceased left behind, that is, herself and the petitioners'.

In their testimony, the 2nd petitioner testified that no relationship existed between the objector and the deceased. He denied that the objector was married to the deceased. He insisted that the objector had been employed by the deceased to work in their farm. He denied that the objector had sired any children with the deceased. He however testified that he knew that the objector claimed that the 2nd wife of the deceased, E N C (*who was childless*) had married the objector for the purposes of siring children for her. The 2nd petitioner however conceded that the objector lived with the deceased and E N C in the 11/4 acre farm. He further admitted that after the death of E N C, he went and occupied the house which used to belong to the deceased and in the process displaced the objector. The objector then moved and resided at a shed which had been erected at the deceased's five acre farm at Moto Farm. The 2nd petitioner claimed the house of his father because he states that under the Kikuyu Customary Law, as a last born son, he was entitled to get the house so that he could take care of the graves of his parents. The 2nd petitioner was however not opposed to the objector getting two acres out of the five acre parcel of land at Moto Farm. The 2nd petitioner however insisted that the objector was never at any time married to the deceased.

DW2 Paul Mwaniki Wachira testified that he was a resident of Moto Farm, Molo. He knew the deceased from the year 1965. He denied that the deceased had married the objector, although he admitted that the objector used to reside with the deceased and his then surviving wife, E N C. He testified that the objector had been employed by the deceased to work in his farm. DW2 however conceded that he was related to the 2nd petitioner by dint of the fact that they married their wives from the same family. Having evaluated the evidence adduced by the objector and the petitioners, certain facts have emerged. Whereas there is a possibility that the deceased could have lived with the objector as a wife, it is clear that at no time did the deceased marry the objector under the Kikuyu Customary Law. No marriage ceremony took place under

the Kikuyu Customary Law. According to the evidence of the objector, when the deceased went to her parents to seek her hand in marriage, he was accompanied by two of his friends. She further testified that the deceased paid a dowry of a donkey and two cows. He also paid one sheep to enable him adopt the first born daughter of the objector who had been born out of wedlock. I did find the circumstances of the customary marriage narrated by the objector to be most improbable. While taking judicial notice of the fact that the Kikuyu community is one of the most culturally progressive communities in Kenya, it is doubtful whether the Kikuyu Customary Law has evolved to the extent that a donkey is accepted as dowry. The 2nd petitioner and DW2 were justifiably shocked that the deceased could have paid dowry in form of a donkey, even if the court were to put into consideration the fact that the deceased was, as the objector termed, “*a Rift Valley Kikuyu*”. The more likely scenerio is as explained by the 2nd petitioner. The objector was employed to work in his farm by the deceased. At the time the objector was so employed in 1983, she already had two children. The objector resided with the deceased and his wife E N C. E N C did not have children of her own. She was childless. She accepted the children of the objector and treated them as hers. Along the way, a relationship developed between the deceased and the objector. This relationship seems to have had the tacit approval of E N C, the deceased’s wife. Several children were born out of the said relationship. Both the objector, the 2nd petitioner and DW2 agree that the objector was more than an employee at the residence of the deceased. Infact the relationship developed to the extent that the objector, rightly in my view, considered herself as the wife of the deceased.

I therefore hold that the objector was the common law wife of the deceased and therefore a dependant and a beneficiary of the estate of the deceased. The fact that the 2nd petitioner is even accepting to give the objector two acres of the parcel of land registered in the name of the deceased clearly shows that he acknowledges the fact that the relationship between the deceased and the objector was more than that of a master and a servant. The objector proved that she harmoniously lived with the deceased and his childless wife for more than a decade before the death of deceased. The objector and the petitioners are therefore declared to be the dependants and the beneficiaries of the deceased estate. I have considered the evidence that was adduced by the parties to these proceedings. I have considered the said undisputed facts in the distribution of the deceased’s estate. Certain arrangements had been made by the deceased prior to his death. For instance the deceased had settled the 1st petitioner, Joseph Ruhangi Chege on his parcel of land known as **Molo South/Ikumbi Block 3/151**. The 1st petitioner is already settled on the said land. He resides therein with his wife and children. Both the objector and the 2nd petitioner accepted that the said parcel of land be inherited by the 1st petitioner. I therefore order that parcel number **Molo South/Ikumbi Block 3/151** shall be inherited by the 1st petitioner.

The 2nd petitioner insisted that he should inherit the house of his late family on account of the fact that he was the last born of the deceased. He testified that under the Kikuyu Customary Law he was entitled to inherit the house so that he could take care of the graves of his deceased parents. The objector in her testimony acknowledges this fact but stated that the land where the house is should be sub-divided into two equal portions to be inherited by herself and the 2nd petitioner. Having evaluated the evidence, I hold that the house which used to belong to the deceased shall be inherited by the 2nd petitioner. For the avoidance of doubt, I hold that the petitioner shall inherit the 11/4 acre plot together with all the developments thereon. The 2nd petitioner shall also inherit one half of parcel number **Mau Summit/Molo Block 5/161**. This parcel of land is approximately five acres. The 2nd petitioner shall inherit the part of the land where he has undertaken developments measuring 2 1/2 acres. The 2nd petitioner shall also inherit the shares of the deceased at Gitinga Group.

The objector shall inherit one half of parcel number **Mau Summit/Molo Block 5/161**. She shall inherit two and half acres of land on the side that she is currently occupying. She shall also inherit the 50x100 ft plot at Moto trading centre where the deceased had erected a business premise. The income from the said premises shall be utilized by the objector to provide for the upkeep of her children. There is no proof that the deceased had any other property other than the ones that this court has distributed. The livestock which the deceased owned are no longer in possession of the 2nd petitioner, the said livestock were sold to defray the funeral and testamentary expenses. This being a Succession Cause, I will make no orders as to costs. It is so ordered.

DATED at NAKURU this 20th day of May 2005.

L. KIMARU

JUDGE