



REPUBLIC OF KENYA



**In re Estate of Clement Manamana Simiyu (Deceased) (Succession Cause
135 of 2014) [2024] KEHC 4428 (KLR) (11 April 2024) (Judgment)**

Neutral citation: [2024] KEHC 4428 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KITALE
SUCCESSION CAUSE 135 OF 2014**

AC MRIMA, J

APRIL 11, 2024

IN THE MATTER OF: THE ESTATE OF CLEMENT MANAMANA SIMIYU (DECEASED)

BETWEEN

SILAS MARUTI SIMIYU 1ST PETITIONER

ROSE KHAVUKIRI 2ND PETITIONER

AND

CLARE NELIMA 1ST OBJECTOR

PHILIP MNAMANA 2ND OBJECTOR

AND

CATHERINE NASAMBU SOITA INTERESTED PARTY

JUDGMENT

Background

1. Silas Maruti Simiyu and Rose Khavukiri petitioned for the administration of the estate of the deceased herein one Clement Manamana Simiyu. That was in 2014. They were the deceased's son and wife respectively.
2. A Grant of Letters of Administration Intestate was issued to the Petitioners on 10th March 2015.
3. Later, Clare Nelima and Philip Manamana, the Objectors herein and who were also some of the children of the deceased and Rose Khavukiri, the 2nd Petitioner herein, filed for revocation of the grant.
4. The objection was allowed and the Objectors made joint Co-Administrators. Therefore, the estate herein has four Administrators being the two Petitioners and the two Objectors.
5. An Amended Grant of Letters of Administration Intestate was issued on 17th April 2017.



6. The 1st Petitioner then filed a Summons for Confirmation dated 22nd January, 2021. He made a proposal on the distribution of the estate.
7. The Objectors, through a Replying Affidavit sworn by Philip Manamana on 8th July 2021 responded to the application and also made a different proposal.
8. The dispute was then heard by way of viva voce evidence where the 1st Petitioner/1st Administrator, the 1st Objector/3rd Administrator, the Trans Nzoia County Land Adjudication and Settlement Officer and the Interested Party herein tendered their evidence.
9. Resulting therefrom is the instant judgment on how the estate herein should be dealt with.

The Hearing:

10. Silas Maruti Simiyu and Rose Khavukiri took a common position. They posited that the parcel of land which formed the sole estate of the deceased herein known as Kwanza/Kapkoi/429 [hereinafter referred to as 'the Land'], had been sold to third parties and that there was nothing to distribute in this case. The land was comprised of approximately 5 acres.
11. Silas testified that before the deceased died, he had been allowed to, and he indeed sold 2 acres of the land [which was his share] to a third party. Later, after the death of the deceased, Rose also sold the remaining 3 acres and left with her 7 children with a view to buy another parcel of land to settle therein. However, the intended sale did not materialize and Rose became landless since then.
12. It was Silas' position that the innocent purchasers should not be disturbed and urged this Court to distribute the land to him and Rose at 2 acres and 3 acres respectively so that they would transfer to the purchasers.
13. The Objectors had a different position. The 1st Objector, Clare, testified to the fact that Rose was her mother. She stated that Silas had been born elsewhere and came to the deceased's home when he was around 20 years old. That, Silas did not settle down well. He was controversial and wanted to sell the land. That, at one time, when the deceased was still alive, Silas allegedly sold 2 acres of the land to a third party; an act which the deceased was vehemently opposed to and in fact he reported the matter to the then Divisional Officer in Kwanza. The said officer directed that the land should not be sold.
14. Protesting over the decision, Silas, who had allegedly entered into a land sale agreement with the purchaser, left their home. He only returned when the deceased had passed on and agreed with Rose to sell 'the remaining 3 acres' of the land.
15. The duo truly executed their intentions and sold 'the remaining 3 acres' of the land to other parties. Rose was to buy another parcel of land elsewhere, but the plans failed and she allegedly lost the money. Rose and all her 7 children were then evicted from the land.
16. Rose abandoned her children and were rescued by one Catherine Nasambu Soita, the Interested Party herein. Catherine was a niece to the deceased.
17. According to Catherine, she had to, through thick and thin, live with all the 7 children in her small rental house since the children had nowhere else to go to. She also confirmed that Rose disappeared and her whereabouts remained unknown to date.
18. Clare and Catherine testified that a family meeting was held through the assistance of the siblings of the deceased and it was resolved that the land be equally shared by the children of the deceased.
19. Silas also affirmed the meeting and urged the Court to find that the land was long sold to third parties.



20. The County Land Adjudication and Settlement Officer confirmed that the land was still registered in the name of the deceased and that it had been fully discharged from the Settlement Trust Fund. To her, the office was waiting for the deceased to collect the necessary documents to be able to be issued with a title deed.

21. The foregoing is the evidence in this matter.

Analysis:

22. Having carefully examined the record, two issues arise for determination. They are as follows: -

- i. Whether the land forms the estate of the deceased.
- ii. If the issue (i) above is answered in the affirmative, whether the land be shared.

23. This Court will consider the issues in seriatim.

a. Whether the land forms the estate of the deceased:

24. On the basis of the evidence by the County Land Adjudication and Settlement Officer, the land is still registered in the name of the deceased herein.

25. As such, and without much ado, and as evidence above, the land forms the sole estate of the deceased.

b. Whether the land be shared:

26. Being the estate of the deceased, there is no doubt that the land should devolve to the beneficiaries.

27. It is on record that the following are the beneficiaries to the estate herein: -

- i. Rose Khavukiri - Widow
- ii. Silas Maruti Simiyu - Son
- iii. Clare Nelima - Daughter
- iv. Philip Manamana - Son
- v. Sammy Luyali - Son
- vi. Teresia Machongit - Daughter
- vii. Ruth Nanjala - Daughter
- viii. Sarah Mukwana Simiyu - Daughter
- ix. Dorcas Mulongo Simiyu - Daughter

28. As the deceased was survived by a single spouse and children, then Section 35 of the [Law of Succession Act](#) (hereinafter referred to as 'the LSA') sets in. Suffice, however, to say that the said provision must be looked through the prism of [the Constitution](#).

29. Section 35 of the LSA mainly roots for equal distribution of the estate among the spouse and the children. Whereas such law is appropriate, a Court, before effecting the provision ought to consider whether there are other intervening circumstances that may reasonably tilt that legal position.

30. This Court, while considering the application of Section 40 of the LSA in Kitale High Court Succession Cause No. 35 of 2017 - In the Matter of The Estate of Muiruri Kamau Gichuri (Deceased)



between Priscillah Wangechi & Another -vs- Anne Wambui Muna (unreported), had the following to render: -

126. On the basis of the foregoing discussion, with the restraint at hand and in line with Section 7 of the Sixth Schedule to *the Constitution* which states that ‘all law in force immediately before the effective date continues in force and shall be construed with the alterations, adaptations, qualifications and exceptions necessary to bring it into conformity with this Constitution’, this Court, therefore, further finds and hold that Section 40 of the Succession Act should apply on a case-by-case basis and subject to considerations including whether the members of the family acted with Articles 53 and 57 of *the Constitution*, whether there are members of the family who are still minors, previous provisions by the deceased among other considerations.
31. This Court equally finds that the application of Section 35 of the LSA should be undertaken with such considerations.
32. Returning to the issue at hand, there is evidence that the alleged ‘sale’ of the 2 acres of the land by Silas was not consented to by the deceased. That is why the deceased reported the matter to the authorities and the alleged sale was revoked. Silas, in protest, then left home only to return after the death of the deceased.
33. Whereas it appears that Silas was not in very good terms with the deceased, this Court, in the unique circumstances of this case, will not take such into account since Silas was never violent on the deceased. He only left their home. Silas, therefore, exercised caution and restraint by leaving their home.
34. This Court is now persuaded that the family agreement reached on 4th June 2021 on the equal distribution of the land is a fair one. However, such should also include Silas and Rose.
35. This Court should hasten to add that the persons who ‘allegedly bought the land’, if any, can only lay claim upon the portions of the land which will be allotted to Silas and Rose, unless otherwise decreed by a competent entity.
36. With such a finding, the matter should now come to an end.

Disposition:

37. Deriving from the above, the estate of the deceased, being the parcel of land known as Kwanza/Kapkoi/429, shall devolve as follows: -
 - a. The parcel of land known as Kwanza/Kapkoi/429 shall equally devolve upon the following persons: -
 - (i) Rose Khavukiri - Widow
 - (ii) Silas Maruti Simiyu - Son
 - (iii) Clare Nelima - Daughter
 - (iv) Philip Manamana - Son
 - (v) Sammy Luyali - Son
 - (vi) Teresia Machongit - Daughter
 - (vii) Ruth Nanjala - Daughter
 - (viii) Sarah Mukwana Simiyu - Daughter



- (ix) Dorcas Mulongo Simiyu - Daughter
- b. The Amended Grant of Letters of Administration Intestate issued on 17th April 2017 is hereby confirmed.
 - c. A Certificate of Confirmation of the Amended Grant shall be forthwith issued.
 - d. The Administrators shall endeavour to, without delay, process the title document in respect of Kwanza/Kapkoi/429 and to distribute the property as decreed herein.
 - e. In the event there are any minor beneficiaries, their shares shall be jointly held in their trust by Clare Nelima And Catherine Nasambu Soita.
 - f. Any resultants costs thereof shall be equally borne by all of the beneficiaries save those who are still minors.
 - g. In the unlikely event of any of the Administrators being unavailable and/or unwilling to execute the necessary documents, the Hon. Deputy Registrar of this Court shall execute any such documents on the part of that Administrator[s].
 - h. In the further unlikely event that any of the beneficiaries [save the minors] is unavailable and/or unwilling to contribute towards the acquisition of the title deed and sub-division of the property herein, the rest of the beneficiaries shall proceed on and the share of the cost by such a beneficiary shall be summarily recovered by way of execution in this matter.
 - i. In case of need, the OCS Kwanza Police Station shall provide security during the time of the sub-division of the land in issue.
 - a. Parties shall bear their respective costs.

It is so ordered.

DELIVERED, DATED AND SIGNED AT KITALE THIS 11TH DAY OF APRIL, 2024.

A. C. MRIMA

JUDGE

Judgment delivered in open court in the presence of:

No appearance for Mr. Karani, Learned Counsel for the Objectors.

No appearance for Mr. Gemenet, Learned Counsel for the Interested Party.

No appearance for the Petitioners.

Chemosop/Duke – Court Assistants.

Catherine Nasambu Soita – Interested Party.

