



**In re Estate of Bernard Bundi Marete alias Denard Bundi Marete (Deceased)
(Succession Cause 577 of 2013) [2023] KEHC 3029 (KLR) (6 April 2023) (Judgment)**

Neutral citation: [2023] KEHC 3029 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
SUCCESSION CAUSE 577 OF 2013
EM MURIITHI, J
APRIL 6, 2023**

BETWEEN

KITHINJI M'IKIARA PROTESTOR

AND

KENNETH MWORIA BUNDI PETITIONER

AND

KENDI BUNDI INTERESTED PARTY

JUDGMENT

1. The Petitioner was issued with a grant of letters of administration intestate on August 31, 2004. However, on September 25, 2019, the court removed the petitioner as an administrator and revoked that grant issued to him. On November 7, 2019, the court appointed a public trustee as the administrator of the estate of the deceased herein. On June 8, 2020, the court appointed the interested party as the administratrix of the estate of the deceased.
2. In his affidavit in support of the summons for confirmation of grant, sworn on March 14, 2019, the protestor listed Susan Kanoria Bundi - widow, David Koome Bundi - son, Kenneth Mworua Bundi - son, Patrick Muthomi Bundi - son, Caroline Gacheri Bundi - daughter, Grace Karianki Bundi - daughter and Kendi Bundi - daughter as the beneficiaries of the deceased. He proposed that 2 acres of land parcel No Kibirichia/Ntumburi/1237 measuring 9.19 Hectares (henceforth called the estate property) be given to him while the balance goes to Kenneth Mworua Bundi.
3. That proposal was opposed by Kendi Bundi vide her affidavit sworn on May 12, 2020 in protest to the mode of distribution as suggested by the protestor. She proposed that the estate property be shared according to the family's unanimous agreement as follows:- Susan Kanorio Bundi - 2.56 acres, Caroline Gacheri Gitonga - 1.00 acres, Kenneth Mworua Bundi - 5.56 acres, David Koome Bundi - 5.56 acres,



Grace Karianki Bundi - 1.00 acres, Patrick Muthomi Bundi - 5.56 acres and Kendi Bundi - 1.00 acres. There is a consent to her mode of distribution duly executed by all the 7 beneficiaries.

4. The protestor swore an affidavit of protest on June 26, 2020 averring that his father, M'Ikiara M'Mugwika purchased 2 acres of the estate property from the deceased herein, as seen from the exhibited agreements. His father took possession of the 2 acres of the estate property and started cultivations thereon, but unfortunately, the deceased died on August 31, 2004 before he could effect transfer thereof. After the death of his father on May 30, 2016, a dispute arose over the parcel of land. He protests to the mode of distribution by the interested party because the estate of his deceased father has not been considered. He wants the 2 acres bought by his deceased father excised from the estate property.
5. The interested party swore an affidavit in response to the protest on August 5, 2020. She admits that the deceased sold 2 acres to the protestor's father but avers that the same was accordingly transferred to him. The family was aware about the sale and some of them participated in the process.

Testimonies

6. The protestor testified as PW1 during the hearing of the protest and adopted his statement as his evidence in chief. He stated that the only living witness to the agreement for the purchase of the 2 acres of the estate property was Daniel Meru M'Garana. His father was given possession of the land in 2001 and began to cultivate it until 2007 when the family of the deceased especially the interested party became violent. He has title issued on May 27, 1997 although the property therein is different from the one in the agreement for sale of 2001. They were evicted from the other shamba and the 1997 property and they claim for 2 acres from the parcel subject of 2001 agreement. The deceased died before transferring the land to his father.
7. On cross examination, he stated that in the initial agreement the first parcel of land Kibirichia/Ntugi/9 gave rise to plot Nos 1236 and 1237. He had titled to plot No 1236 for Ntumburi/9 in the name of his father and the remainder of the land in plot No 1237. The 2 acres they were claiming were adjacent to plot No 1236.
8. PW2 Angelica Ikiara, the widow of M'Mugwika adopted her statement recorded on June 26, 2020 as her evidence in chief.
9. On cross examination, she stated that the 2 acres of land was bought by her husband and herself. She was there when the money was given. She did not see the agreements being written. She was aware of the 2 acres initially sold to Ikiara. When they were cultivating on the 2 acres they had initially bought, there were many people cultivating on the deceased land. The family knew of the sale of parcel No 1236 and they did not oppose.
10. On re-examination, she stated that the deceased was not drunk when he sold the last 2 acres.
11. PW3 Daniel Meru, adopted his statement dated November 11, 2020 as his evidence in chief. He signed the agreement of January 28, 2001 where the deceased gave M'Ikiara 1 acre parcel in exchange for Ksh 20,000.
12. On cross examination, he stated that he lived on the deceased land from 1983 to 2002, when the deceased family asked him to peacefully leave. He saw the deceased being given Ksh 20,000 by M'Ikiara. The agreement does not state the deceased was selling a shamba. There is no reference to a shamba. The agreement does not state that the deceased will give shamba if he failed to pay the loan. The land had been leased to many people. The family of M'Ikiara did not lease the property. He did not know of any other money that M'Ikiara gave to the deceased.



13. On re-examination, he stated that at the time of the writing the agreement, he was with Gatobu Ikiara, M'Ikiara, Ikiara's wife and the deceased. He was there when Ikiara bought 1 acre.
14. PW4 Elijah Ngera, adopted his statement recorded on June 26, 2020 as his evidence in chief.
15. On cross examination, he stated that he worked for M'Ikiara Mugwika on a shamba that belonged to the deceased, but he did not know whether he had bought the land or leased it. He did not know the number to the parcel of land.
16. On re-examination, he stated that he worked on the estimate on 4 acres but in 2017, they were stopped from cultivating the latter 2 acres. They started using the 2 acres in 2001 and he did not see Ikiara pay any money to the deceased at any time.
17. PW5 Albert Kimaita Kamunde, the chief of Tumberi location adopted his statement recorded on June 26, 2020 as his evidence in chief. The late Ikiara came to his office in August 2015 complaining that a boundary had been removed by people who had sold 4 acres to him. He had seen the late Ikiara in possession of the shamba for about 15 years. The family of Ikiara said they had purchased 4 acres while the deceased family said they were only aware of 2 acres. The wife of the deceased agreed that she had taken some food stuff but denied that it was part of purchase price. In 2015, the late Ikiara was using the 2 acres in dispute.
18. On cross examination, he stated that he never visited the land in dispute. When he summoned the wife of the deceased, she denied that her husband had sold the 2 acres.
19. PW1 Kendi Bundi, testified that the protestor is not in the confirmation of grant because he is not a son of the deceased or a direct beneficiary. The protestor's father had bought 2 acres from the deceased from Kibirichia/Nrumburi/9 and the family knew about the sale and participated. The land they were transferring as Kibirichia/Ntumburi/1235. The agreements for the subsequent sale of 2 acres do not show the registration number of the land being sold. The signature on the documents were not the deceased. When they appeared before the area chief during the filing of the succession cause in 2013, the family of Kithinji did not raise any complaint. M'Kithinji's protest should be rejected because he is not a beneficiary of the deceased. Parcel No 1235 is already registered in the family of Mr Kithinji Marete and they do not have a claim to it because they participated in the process.
20. On cross examination, she stated that when they came, M'Ikiara was not farming on the disputed 2 acres. He was farming on parcel 1236. There were many people who had invaded the land including Daniel Meru.
21. PW2 Kenneth Mworja Bundi adopted his affidavit of August 5, 2020 as his evidence. He knew Ikiara had bought 2 acres from his father as he got a title deed for it. The title deed is for parcel No 1236/ Kibirichia Ntumburi. The family of M'Ikiara were using piece of land other than 1236 but they stopped them. He agreed with the mode of distribution proposed by the interested party at paragraph 5 of the affidavit in support of confirmation of grant sworn on June 22, 2020.
22. On cross examination, he stated that it was the person who was taking care of the land who had given the family of Kithinji M'Ikiara the parcel of land to use. Danile Ngera is the person who had been left with the shamba.
23. PW3 Susan Bundi adopted her affidavit dated June 20, 2022 as her evidence. She testified that M'Ikiara bought only 2 acres of land from the deceased.



24. On cross examination, she stated that M'Ikiara and her husband were friends. They used to visit each other and the food she received was not as purchase money. M'Ikiara was cultivating on the land while they were at Nanyuki. They removed them from the shamba in 2003 and started using the land.
25. On re-examination, she stated that when they came back from Nanyuki in 2001, they asked all the people farming on the land to vacate, and they all left including M'Ikiara who then filed a complaint.

Submissions

26. The interested party urges that there was no proof of a sale agreement between the deceased and the protestor's father, and the protestor is not entitled to any part of the estate of the deceased. She urges the court to order that the estate be distributed as per her proposal in her affidavit in support of the summons for confirmation of grant.
27. The protestor urges that the estate of the late M'Ikiara M'mugwika should be included in the mode of distribution and allocated 2 acres of the estate property or in the alternative a refund of Ksh. 140,000 plus interest at market rates from 2001 until payment in full. He urges that the dispute herein is properly before this court and cites *Mbula Muoki Ndolo & Another v Kenya Power and Lighting Company Limited [2017]eKLR*.

Analysis and Determination

28. The issue for determination is how the estate property ought to be distributed.
29. The undisputed facts in this case are that the deceased, who died intestate was survived by 7 dependants namely Susan Kanorio Bundi - wife, Caroline Gacheri Gitonga - daughter, David Koome Bundi – son, Kenneth Mworira Bundi - son, Grace Karianki Bundi - daughter, Patrick Muthomi Bundi - son and Kendi Bundi – daughter.
30. The interested party admits that the protestor's father only purchased 2 acres from the deceased herein, which land was transferred to him. However, the protestor contends that his father purchased an additional 2 acres of the estate property, which he now claims.
31. The protestor has produced sale agreements to support his claim for the additional 2 acres. The said agreements do not have the parcel of land which was allegedly being sold and the interested party together with her witnesses termed the signatures thereon as forgeries.
32. The wife to the deceased herein, Susan Bundi maintained that she was only aware of the initial 2 acres of land parcel No 1236 sold to the protestor's father by the deceased.
33. The interested party deponed that the family had agreed on how the estate property was to be shared and the court notes the consent duly executed by the 7 beneficiaries of the deceased.
34. This court is satisfied that the Protestor's father only purchased 2 acres of land parcel No 1236 from the deceased, which was duly transferred to him. The court finds that since the protestor has failed to prove his claim for an additional 2 acres of the estate property, his protest fails.

Orders

35. Accordingly, for the reasons set out above, the Protestor's protest dated June 26, 2020 is dismissed, and the Court makes the following specific Orders.
 - a. The grant issued to the Interested Party is confirmed in terms of paragraph 10 of her affidavit sworn on May 12, 2020.



- b. LR No Kibirichia/Ntumburi/1237 measuring 9.19 Ha shall be shared as follows:
- i. Susan Kanorio Bundi - 2.56 Acres
 - ii. Caroline Gacheri Gitonga - 1.00 Acres
 - iii. Kenneth Mworio Bundi - 5.56 Acres
 - iv. David Koome Bundi – 5.56 Acres
 - v. Grace Karianki Bundi - 1.00 Acres
 - vi. Patrick Muthomi Bundi - 5.56 Acres
 - vii. Kendi Bundi - 1.00 Acres

36. There shall be order as to costs.

Order accordingly.

DATED AND DELIVERED ON THIS 6TH DAY OF APRIL, 2023.

EDWARD M. MURIITHI

JUDGE

Appearances:

M/S. Basilio Gitonga, Muriithi & Associates, Advocates for the Administrator.

M/S G. M. Wanjohi, Mutuma & Co. Advocates for the Protestor.

