



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT MAKUENI**

**HC P&A. NO. 224 OF 2017**

**ESTATE OF ELIJAH MUTUA MUAMBI (DECEASED)**

**ARRON MUTUA MUAMBI ..... PETITIONER**

**-VERSUS-**

**DOMITILA KATILO MWANZIA ..... OBJECTOR**

**RULING**

1. The Petitioner lodged Chamber Summons dated 04/12/2017 on 07/12/2017 seeking confirmation of grant in the instant matter and for the court approval of distribution of the estate of deceased person to the beneficiaries.
2. The Protestor Domitila Kitilo Mwanzia lodged protest in a response to the aforesaid application on the ground that before registration of one parcel part of the estate No. Makueni/Mubau/301.
3. The deceased sold to her husband who was deceased son a portion thereof. However during registration the deceased registered the entire parcel of land in his name.
4. A homemade notes claimed to be agreement and translation thereof is attached. Same is alleged to have been entered into on 13/10/1984.
5. When matter came for hearing, the parties agreed to hear the matter via viva voce evidence. The protestor testified and never called any witnesses. The Petitioner testified and called 2 witnesses.
6. The protestor testified and reiterated what is in his affidavit of protest. She proceeded to demonstrate that in presence of named elders in the agreement of 13/10/1984.
7. The deceased and her husband entered into an agreement of sale of unspecified piece of land and did pay Kshs. 25,900/=. She named 6 witnesses who were present.
8. She claims that the portion bought by her husband should be set aside and given to her before the estate of the deceased is shared equally before the beneficiaries.
9. The Petitioner has testified explaining the sharing of the deceased estate as set out in the affidavit in support of the application for confirmation of grant and distribution.
10. He says that the beneficiaries have agreed on sharing and a consent attached and signed by them. He says the agreement of 18/08/2003 share the land deceased estate equally.
11. DW2 is a beneficiary and a son of the deceased. He said that his deceased father was given land subject of protest from the government and the protestors husband never bought any portion from his father as alleged.
12. He says the land is 69 acres in size. He says he got 6.27 acres and every beneficiary got same size. It is only the protestor who is complaining.
13. DW3 also a son of deceased and a beneficiary testified that protestor got 6.72 acres from the proposed distribution and himself got 6.72 acres. He says she agreed to the sharing and thus does not understand what she is demanding.

**ISSUES**

14. After going through the affidavit and evidence on record, I find that only singular issue is whether the agreement of 13/10/1984 is enforceable by this court?
15. On the face of the agreement, same would appear to be time barred as the same was made more than 2 years ago. Thus cannot be employed as a tool to recover land by virtue of Section 4 of Limitation of Actions Act Cap 22, L.O.K.
16. Secondly the protestor does not demonstrate that she is the legal representative of her late husband to have capacity to claim on behalf of his estate.
17. Thirdly the agreement does not specify the land allegedly bought nor did the contractors; deceased and her husband appear not to have appended their signatures.
18. And finally and the most important for this court, the claim of ownership of land as alleged cannot be litigated via P&A matters and before this court.
19. This court by virtue of Article 165(2) Constitution lacks jurisdiction to entertain such claim. The same lies in the mandate of Environment and Land Court (ELC).
20. Thus the protest herein is incompetent and lacks merit thus struck out with no orders as to costs.
21. The court therefore goes ahead to confirm grant and approve distribution as set out in affidavit in support of Chamber Summons dated 04/12/2017.
22. Parties to bear their own costs.

**DATED, DELIVERED, SIGNED THIS 7<sup>TH</sup> DAY OF FEBRUARY, 2019 IN OPEN COURT.**

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**HON. C. KARIUKI**

**JUDGE**