



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS

SUCCESSION CAUSE NO. 256 OF 2013

IN THE MATTER OF THE ESTATE OF MOSES MASYULA KIVUVA (DECEASED)

ALEXANDER KIVUVA KATILA.....1ST RESPONDENT

AGNES NEDITIVA WAITA.....2ND RESPONDENT

VERSUS

FLORENCE WAYUA KIVUVA..OBJECTOR/APPLICANT

RULING

1. The matter herein relates to the estate of Moses Masyula Kivuva who died intestate on 28th September, 1995.
2. The administrators/Respondents herein petitioned for letters of administration and subsequently the same was issued on 4th July, 2013. The said administrators filed summons for confirmation of grant on 10th November, 2015.
3. The protestor herein then filed an affidavit of protest dated 6th October, 2016 protesting to the confirmation of the grant of letters of administration. The 1st administrator filed his replying affidavit on 18th July, 2017.
4. The matter proceeded by way of viva voce evidence. The protestor testified and called one witness while the Petitioners testified alone.
5. Parties were directed to file submissions on the protest.
6. The protestor herein gave her testimony that she is a brother to the deceased. She stated that the deceased had no wife or children. Further that the 1st administrator is a nephew of the deceased while the 2nd administrator is a wife to the deceased's brother. The protestor is opposed to the mode of distribution as proposed by the administrators and would like the estate distributed as per the mode agreed by the family on 22.9.12. Minutes of the meeting were tendered as evidence.
7. Pw2 was Maurice Mutevu, a clan elder who testified about the clan meeting that was held on 22.9.12 where the family agreed on how the land parcels 470, 298 and 296 which belonged to the deceased were to be distributed. He confirmed that the 1st Administrator was present in the meeting representing his father and none of the family members raised any complaint on the distribution.
8. The 1st petitioner/administrator testified that the objector is a sister to his late father and that the lands in question belong to his uncle. He testified that he agreed with the proposal by the protestor. On cross-examination, he denied that the family entered into an agreement on 22.9.12 though he agreed that there was a meeting on the said date.
9. The 2nd Administrator testified that the 1st administrator is her nephew since his father is a brother to her husband and the protestor is a sister to her husband. She testified that she is in agreement with the protest. She confirmed that the deceased did not have a wife or children and the assets are to be distributed as agreed on 22/9/2012 by the family.
10. It was the evidence of the 1st and 2nd Administrators that they agree with the protest and in effect the mode of distribution thereto. The objector noted this in her submissions and thus submitted that the mode of distribution that she proposed be adopted.
11. The administrators have not filed submissions.
12. The issue for determination in this matter is ***whether the protest should be allowed and the property be distributed as per the protest.***

13. The parties have not disputed that the deceased was not married and had no children. Similarly the administrators are commendably in agreement with the mode of distribution proposed by the protestor. The mode was a culmination of a family meeting that was held on 22.9.12 and the minutes of the said meeting was produced and which have not been objected to and therefore it shall be a useful guide to the court in the determination of this matter.

14. The court therefore holds that the protestor has proved the demonstrated wish by the family for sharing of the deceased's property pursuant to the family meeting held on 22/09/2012.

15. Thus the court makes the following orders;

i. The Protest is allowed and the property shall be distributed as per the protest.

ii. The Administrators shall file an amended application for confirmation within 30 days and the beneficiaries shall all appear in court on an appointed date for the said confirmation.

iii. There shall be no orders as to costs.

It is so ordered.

Dated and delivered at Machakos this 1st day of April, 2019.

D.K.KEMEI

JUDGE