



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KITALE

SUCCESSION CAUSE NUMBER 203 OF 2007

IN THE MATTER OF THE ESTATE OF THE LATE MICHAEL PKERKER TONGOJIN (DECEASED)

PENINAH MUGURE MWANGI.....PETITIONER

VERSES

ELIZABETH NALIKA.....OBJECTOR

JUDGEMENT

1. A confirmed grant to the estate of the deceased herein was issued to the Petitioner in this matter on 3rd May, 2018 in which **Land Parcel No. Twiga Settlement Scheme Plot No. 306** was shared out between her and the objector herein as well as the deceased death gratuity .

2. The Objector herein who was not a party in the whole process but was nonetheless given 2.6 acres out of the parcel which she was to hold in trust for herself and the children of the late **MARY CHEPOTULA MICHAEL TONGOJIN** raised an objection arguing that she was the deceased wife having married each other under the tenets of Pokot customary Law.

When her application for objection dated 10th May, 2018 came up for determination the court ordered that it be heard by way of viva voce evidence. The Objector testified that she was married by the deceased in the year 1973 and they were blessed with 8 children. She said that the deceased who was a police officer equally married the Respondent and settled her at Chepararia in Kapenguria but settle her at Twiga farm. She said that the deceased would come visiting occasionally. After he died he was buried at Kapenguria.

3. **PW2 Moses Nato Wanjala** testified on behalf of the Objector and said that he had seen the deceased's at Twiga farm since 1982 and for all intent and purposes he was his wife. He said that he had 6 children with the deceased. He however did not know the petitioner.

4. The Petitioner on the other hand denied that the deceased was married to the objector at all. She said that when the Twiga farm was purchased by the deceased they permitted her to take care of that land and that for all intent and purposes she was not the deceased wife. She stated that she was in school with the deceased in the year 1974 when it was alleged that he married the Objector.

5. She said that being a police officer the deceased worked in several places in the country and would come home at kapenguria. She generally denied that the objector was his wife but a licensee who was permitted to take care of the land.

6. **DW2 FREDRICK LOKEL NARONGAR** testified on behalf of the respondent and stated that the deceased was his uncle and that he knew the respondent as his only wife. He said that when he went to Twiga farm he found the objector with her children settled on the land.

ANALYSIS AND DETERMINATION

7. The parties herein were unrepresented all through . Having heard both sides the first issue for determination is whether in light of the evidence and pleadings on record, was the Objector the wife to the deceased and if so does she merit to inherit the estate.? There was no evidence produced to show that there was any marriage conducted between the 2 under the Pokot Customary Law.

8. What is interesting though is that the objector had 7 children with the deceased as per her replying affidavit on record sworn on 15th October, 2018. She has infact attached some copies of the identity card of the children who are all adults. There was no suggestion that the deceased did not see any children with the objector. The only contention by the petitioner was that she had been permitted by the deceased to take care of the farm.

9. It appears that the petitioner did he not set foot on the Twiga farm till the deceased died. Her witness said that he went to the land and found the Objector residing there with her family.

10. The picture painted here in my view by both sides is that it is only the objector who has been on the land. The rest of the deceased wives did not stay or even farm on the land. If the deceased did not recognise the objector as a wife over the years why would she be allowed to stay and work on the land without any let or interference?

11. Why would the deceased not take any steps to ensure that at least the petitioner and his other deceased wife utilise the suit land?

12. The court has perused the application dated 15th March, 2018 by the applicant seeking to rectify the grant. The supporting affidavit apparently introduces the objector who was to be given 2.6 acres which she was to hold it in trust for the children of the late **MARY CHEPOTULA MICHEAL TONGOJIN**. The question is, why was she introduced by the applicant to the scene if at all she did not recognise her? Why was she required to hold in trust a portion of the estate on behalf of the children of the deceased other deceased wife? What was so hard in the applicant holding the same and yet she recognised that the late Mary was deceased wife?

13. The answer to the above questions is that the Objector by all indications was the wife to the deceased and not a licensee permitted to take care of the land. It even appears that if the deceased wanted to remove her from the land he would have done it before he died in 2003. It is evident that by the year 1982 the objector was already on the land courtesy of the deceased.

14. It is worthy noting that even the applicant did not produced any evidence to show that there was a marriage ceremony between her and the deceased. Equally it can be assumed, correctly, that the objector underwent the same ceremony just like the Applicant.

15. Further, the children born to the objector have not been denied by all and sundry that they don't belong to the deceased or at all. DW2 stated that when he went to the land he found the objector settled with her family.

16. In the premises and under the provisions of section 45 of the Succession Act the objector is the rightful wife and therefore a widow of the deceased herein. She therefore qualifies together with her children to inherit the estate.

17. The court having found so would have proceeded to distribute afresh the estate but it appears that apart from the objector there are other beneficiaries who includes the children of the late Mary Chepotula and who it appears the applicant unilaterally decided to have the objector hold their portion in trust. Their details and ages have not been shown to this court.

18. Secondly, the applicant decided that she should share with the objector the deceased employment benefits. Why did she decide so if she did not recognise her and at the same time what of the children of Mary? Aren't they entitled too?

19. For the foregoing reasons the court holds that:

a. the applicants objections herein is allowed and in particular that she was the wife of the deceased herein.

b. the confirmed grant dated 3rd may 2018 issued to Peninah Mugure Mwangi with all attendant consequences is hereby revoked.

c. a fresh grant is issued jointly to PENINAH MUGURE MWANGI and ELIZABETH NALIKA.

d. The said administrators should apply afresh distribution of the deceased estate taking into consideration the children of the late MARY CHEPOTULA MICHEAL TONGOJIN and any other properties left behind by the deceased.

e. Each party shall meet their respective costs.

Dated, signed and delivered this 15th day of May, 2019.

H.K.CHEMITEI

JUDGE

15/5/19

In the presence of:

Peninah Mwangi – present

Elizabeth Naliaka – present

Court Assistant – Kirong

Judgment read in open court.