



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

SUCCESSION CAUSE NO. 37 OF 1991

IN THE MATTER OF THE ESTATE OF FREDRICK MARANYA (DECEASED)

HARRIET KARIMBA.....PETITIONER

STEPHEN KINYUA MARANYA.....SUBSTITUTED PETITIONER

VERSUS

JOHN NDEGWA.....OBJECTOR/PETITIONER

BESSY NKIROTE NDEGWA.....OBJECTOR

JUDGMENT

[1] In a partial judgment dated 12th February 2019 the court stated and ordered the following:-

From the foregoing, clarification thereto is necessary so that the court is properly grounded to distribute the estate. The assets have been established, but the identity of all the beneficiaries of the estate of the deceased is obscure. Accordingly the court makes the following order:

THAT parties file affidavits within 14 days pointing out ONLY who the children of the deceased are in each house, whether they are alive or deceased. If deceased whether they have left behind any spouse, child or dependant. Distribution shall be done immediately upon filings in (a).

[2] In compliance with the above order, the petitioner filed a list of beneficiaries on 27th February 2019. Stephen Kimathi M'Maranya also filed an affidavit sworn on 21st February 2019. The petitioner does not recognize Charity Nkatha as a wife of the deceased or her as dependants of the deceased. Stephen Kimathi who comes from the house of Charity recognizes her mother and siblings as dependants of the deceased. But he seems not to know much about the children of the other two houses of the deceased. I should now settle this issue on dependants.

[3] **FREDRICK MARANYA (“the deceased)** to whom this Succession Cause relates died on 7th February 1989. The petitioner applied for letters of administration where she stated that the deceased was survived by:

1. Triphonsa Mukomeru Maranya - Wife
2. Harriet Karimbi Maranya - Wife
3. David Kubai - Son
4. Stanley Nkunja Maranya - Son
5. Silas Kithinji Maranya - Son
6. Stanley Kigunda Maranya - Son
7. Stephen Kinyua Fredrick Maranya - Son

8. Hellen Kaigongi Rutere - Daughter
9. Susan Nkori Maranya - Daughter
10. Kanana Maranya - Daughter
11. Sella Maranya - Daughter
12. Bundi Maranya - Daughter
13. Robert Kinoti - Daughter
14. Jane Nkatha - Daughter
15. Samuel Raru - Nephew

She listed the assets of the deceased to be: land parcels **Nyaki/Kithoka/666 (1.1275Ha)**, **Ntima/Igoki/561 (0.56 Ha)**, **Kiirua/Ruiri/402 (6.2 Ha)** and **Plot NO. 1241 Bula Pesa Isiolo**. She stated the liability of the estate to be; that before his death the deceased said L.R. No Nyaki/Kithoka/666 must be sold and the proceeds therein to be used in purchasing another land for Stephen Kinyua Fredrick and Stanley Kigunda Maranya comprising of at least 2 acres each. She averred that the entire family agreed that the said land be sold to Martin Mugambi Mithega.

[4] On 4th April 1991 the petitioner was issued with the grant of letters of administration intestate which were confirmed on 2nd May 1991. An objection was raised and on 5th September 1991 and the court revoked and set aside the said grant and gave the objector an opportunity to file his reply to the petition and/or cross petition. The parties filed their affidavit evidence but since the issues were complex it was concluded that cross examination is needed to enable the court to arrive at a just decision.

[5] **Objector John Ndegwa** testified that the deceased was his father as he was married to his mother Charity Nkatha who was his only wife. The deceased later moved to Chuka where he had two children with Triposa Mukomeru namely Kinaitore and Kainda Stanley. They all came to live with them in Nkuone. He affirmed that he knows the petitioner as she was a neighbor who was married to an AP known as William Karaine and they had three children: Nchororo, Kananu and Kaigongi. Later he saw the petitioner living with Felix Kimathi M'Kimeru and had two children: Kinyua and Kanana. The deceased never indicated that the petitioner was his wife but he heard that she was his step mother. He has never been married to the petitioner as she was just a girlfriend and as such she is not entitled to the estate together with her children as they are not fathered by the deceased.

[6] **OB2 Gerald Mutua M'Anampiu** stated that he knows the deceased and his three wives: Nkatha, Mukomeru and Karimba. That John Ndegwa is the son of Nkatha. He stated that the deceased had another child but cannot remember his name. He heard that Nkatha and deceased separated after she burned down the house of the last wife. But they got other children after the incident as they were not entirely divorced. He said that he does not know the children of the third wife. He knows the properties of the deceased and the land in Kithoka is the one in dispute.

[7] More evidence was given that the deceased chased away Nkatha and the objector as he alleged that the latter was not his son. The clan resolved the matter and John was to get 2 acres of the said land that was given to Nkou clan of which the deceased and objector are part of. Five elders were selected to confirm that the land is entrusted to the deceased on behalf of John until he obtains his ID card. One of the elders was his father. The deceased refused to transfer the land to the John which resulted in a law suit of which he does not know the outcome. But the land is where John and his children live and nobody else lives on the land. When John died he was buried on the said land.

[8] **Charity Nkatha M'Maranya** affirmed that the matter was filed secretly and without her knowledge. The deceased was her husband as she was his 1st wife. They established their matrimonial home at Nkuone where they had six children: John Ndegwa, Simon Koome, Jane Karruirwa, Kimathi Mwongera, Gacheri and Stephen Kimathi where she still lives up to date. The deceased married other wives namely Mukomeru and Karimbi. He lived with Karimbi in Tigania and Mukomeru in Nkuone. That John was given the land at Kithoka by the clan. The land was thereafter used by the children of the deceased that is Stephen Kimathi and John Ndegwa. As for her she needs land at Kithoka because she is the 1st wife.

[9] **Bessy Nkirote Ndegwa** daughter of John Ndegwa affirmed her father's assertions and said that her father lived on the land and that she was born there.

[10] On the other hand, **Harriet Karimbi Maranya** stated that the deceased was her husband and were blessed with Eliud Karemu, Stephen Kinyua, Hellen Kaigongi, Anne Kanana, Silas Kithinji, Jane Nkatha, George Bundi, Robert Kinoti, Stanley Nkunja, Susan Nkoroi. The deceased was also married to Triposa Mukomeru and were blessed with Naitore Ntarangwi, Stella Karimi, Stephen Kigunda (*deceased*) and Purity. She affirmed that he permanent home is at Nkoune in Ntima Location. When she got married Triposa was already there as she is the elder wife. That Charity Nkatha was not a wife of the deceased; neither Charity nor the objector was at the burial.

[11] She stated that the deceased said that Ntima/Igoki/561 should go to her, Triphosa, Jane and Raaru son of his brother. As for Nyaki/Kithoka/666 was to be sold to raise money to buy land elsewhere for other children and which was then sold to one Mithega and it was transferred to him. The objector is not a son of the deceased and she does not know how he came into occupation of the said land as he had been disowned by the deceased. As for Plot at Bula Pesa/1241 was sold by her sons Stephen Kinyua and Kigunda Stanley three years after the deceased's death. The purchase price of Kshs. 10,000/- was given to her. She supports the mode of distribution she presented earlier.

ANLYSIS AND DETERMINATION

Assets of deceased

[12] In order to distribute this estate, I should establish the assets and dependants of the deceased. Assets of the deceased have been stated to be **Nyaki/Kithoka/666, Ntima/Igoki/561, Kiirua/Ruiri/402** and **Plot NO. 1241 Bula Pesa Isiolo**. Nyaki/Kithoka/666 seems be the major point of dispute for the objector stated that this land was given to him by the clan and the deceased held it in trust for him. But he went ahead and registered the land in his name which resulted in Meru HCCC No. 89 of 1988 between the deceased and objector. The case is still pending in court. Furthermore, the petitioner and Triposa Mukomeru also sold the said parcel of land to one Martin Mithega. On 26th September 2018 the court directed that the said property's ownership shall be determined in the pending case No. 89 of 1988 and set aside the said property. This court will only give effect to the decision of ELC on the property.

[13] In relation to plot No. 1241 Bula Pesa Isiolo the petitioner stated that the plot was sold by her two sons Stephen Kinyua and Kigunda Stanley and the purchase price was given to her. She admitted that it was a mistake to sell it before getting the grant. **Section 45 read together with Section 82 of CAP 160** prohibits disposal of the deceased's immovable property before confirmation of grant. It was wrong to dispose of the estate of the deceased before confirmation of the grant. There is however no evidence of the sale. Nonetheless, the sale would be and is declared to be null and void. Consequently, assets for distribution are **Plot No. 1241 Bula Pesa Isiolo, Ntima/Igoki/561, and Kiirua/Ruiri/402**.

Of beneficiaries

[14] According to **Section 29 of CAP 160** dependant means.

“(a) the wife or wives, or former wife or wives, and the children of the deceased whether or not maintained by the deceased immediately prior to his death;

(b) such of the deceased's parents, step-parents, grand-parents, grandchildren, step-children, children whom the deceased had taken into his family as his own, brothers and sisters, and half-brothers and half-sisters, as were being maintained by the deceased immediately prior to his death; and

(c) where the deceased was a woman, her husband if he was being maintained by her immediately prior to the date of her death.”

[14] According to the petitioner, the objector and her mother one Charity Nkatha are not dependants of the deceased. The objector also stated that Harriet Karimbi is not a wife of the deceased as she was married to other people but not the deceased. There is a dilemma here.

[15] The petitioner stated in her affidavit sworn on 8th March 1995 stated that Charity Nkatha divorced with the deceased in 1955 when John Ndegwa was eight months old after the deceased discovered that he was not his son. **OB2** told the court that yes the deceased chased away Charity but they did not entirely separate as they got other children. Clearly, the deceased and Charity Nkatha were married. The petitioner who alleges separation has not produced any evidence to back up her claim. In any case, there is no proof that Charity Nkatha was divorced, I therefore find that she is a wife and her children are all beneficiaries of the deceased in law.

[16] The objector alleged that the petitioner is not a wife of the deceased. He has not adduced any evidence to prove these claims. I note that the testimony of his own witness **OW2** on one hand affirmed that the deceased was married to the petitioner, and on the other he stated that she was a girlfriend. Charity stated that the deceased married two their wives. Flowing from the evidence, irresistible inclination is accepting that she and her children are beneficiaries of the deceased. I so find.

[17] The evidence adduced and the list filed show that the beneficiaries of the deceased are:

(a) Charity Nkatha

1. John Ndegwa-deceased
2. Simon Koome
3. Jane Karuirwa
4. Josphine Gacheri
5. Stephen Kimathi

(b) Triphosa Mukomeru

1. Lydia Naitore Ntarangwi
2. Susan Karimi

3. Stephen Kigunda- deceased

4. Eunice Kagwiria

(c) Harriet Karimbi

1. Eliud Karemu

2. David Kubai

3. Stephen Kinyua

4. Hellen Kaigongi (deceased)

5. Anne Kanana

6. Silas Kithinji

7. Jane Nkatha

8. George Bundi

9. Stanley Nkunja

10. Susan Nkoroi

Distribution

[18] As the deceased was polygamous, section 40 of the law of succession Act will apply. The section states:-

40. Where intestate was polygamous

(1) Where an intestate has married more than once under any system of law permitting polygamy, his personal and household effects and the residue of the net intestate estate shall, in the first instance, be divided among the houses according to the number of children in each house, but also adding any wife surviving him as an additional unit to the number of children.

(2) The distribution of the personal and household effects and the residue of the net intestate estate within each house shall then be in accordance with the rules set out in sections 35 to 38.

[19] Accordingly, the estate of the deceased comprising of the assets listed above shall be shared equally amongst the following children of the deceased:

1. The state of late John Ndegwa

2. Simon Koome

3. Jane Karuirwa

4. Josphine Gacheri

5. Stephen Kimathi

6. Lydia Naitore Ntarangwi

7. Susan Karimi

8. Estate of late Stanley Kigunda

9. Eunice Kagwiria

10. David Kubai

11. Stephen Kinyua

12. Estate of the late Hellen Kaigongi (deceased)

13. Stanley Nkunja

14. George Bundi

15. Silas Kithinji

16. Jane Nkatha

17. Susan Nkoroi

[20] A grant to the Objector and the Petitioner is confirmed in the foregoing terms.

Dated, signed and delivered this 13th day of May 2019

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F. GIKONYO

JUDGE

IN PRESENCE OF

Ann for 1st and 2nd protestor

M/s Nelima for Ngunjiri for objector

Kiautha for petitioner – absent

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F. GIKONYO

JUDGE