



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT BUNGOMA

PROBATE & ADMINISTRATION CAUSE NO.403 OF 2010

MARANGO WENINA.....DECEASED

AND

SIUNDU NDOROBWA.....1ST APPLICANT

STEPHEN MARANGO.....2ND APPLICANT

WYCLIFFE BARASA.....3RD APPLICANT

VERSUS

MICHAEL WANJALA MARANGO.....RESPONDENT

JUDGEMENT

1. This case revolves around the Estate of Marango Wenina who died intestate in 1975 leaving behind two wives and several children as follows:-

1st Wife Nanjala Khaemba

Children:

Siundu Ndorobwa (son)

Rispa (daughter)

Musanya (daughter)

2nd Wife Veronica Makokha

Children:

Stephen Marongo (son)

Michael Wanjala (son)

Norah)

Tina) daughters

Beatrice)

Saumu and)

Jentrix)

2. Only one asset was left behind by the deceased namely **Bungoma/Kibisi/339** where the deceased and the respondent Michael Wanjala occupied before the demise of the deceased.

3. The above factor is not in contention what is at variance is how the applicant came to be in occupation of the said asset and the other sons being elsewhere.

4. The case for the applicants, **Siundu Ndorobo and Stephen Marango** is that upon his death their deceased father left behind one asset; land Parcel No. **Bungoma/Kibisi/339** measuring 15 acres and that in the year 1985 the Balako clan where they belong shared the said property amongst the 4 sons of the deceased as follows;

Khaemba Marango – 2 acres

Siundu Marango – 2 acres

Stephen Marango – 2 acres

Michael Marango – 9 acres

5. It was also their case that all of them were satisfied with the distribution by the clan and that the deceased did not own either Bungoma/Kibisi/319, 183 or 166 as alleged, as they each purchased their respective parcels for themselves and realizing that the respondent had no land of his own had agreed to give him a larger portion of their father's which he has continued to sell over the years and has now chased the applicant's from their portion of the ancestral home.

6. The respondent on his part stated that his father like all squatters at the advent of Kenya's independence had an opportunity to purchase land within the farms they were working. That their father before independence worked on a farm owned by MC Adam and after the Government acquired the same it shared among the squatters it under a new arrangement that was to be administered through The Settlement Fund Trustees and renamed the farm Kibisi Settlement Scheme.

7. That the deceased acquired 4 shares each measuring Approximately 15 acres and he caused three of the shares to be registered in the names of his 3 sons as follows; **Khaemba** as owner of **Bungoma/Kibisi/329**, **Siundu Ndorobo** as owner of **Bungoma/Kibisi/183 and Bungoma/Kibisi/166** in the names of **Stephen Marango**. The 4th share was registered in his own names as his youngest son the respondent was about 15/16 years and this was Parcel No. **Bungoma/Kibisi/339**, as he held the same in trust for his said son. Further that the respondent has since remained on the land and in 1993 he cleared the loan and that the land being his, he applied for a grant in the Resident Magistrate's Court without involving his brothers.

8. He further argues that the family did not get their shares by coincidence but because their late father made a deliberate effort to get each son 15 acres and this explains why the applicants stayed away and let the respondent utilize the land.

He also contended that the clan elders had no mandate to distribute if at all as the said land subject matter is not up for distribution.

9. I have considered the pleadings, all other documents filed in this matter and submissions by the parties. The issues for consideration are;

i) Whether or not the deceased died intestate

ii) What property(ies) did the deceased leave behind

iii) Who is to inherit the property(ies)

iv) Costs.

10. None of the parties claimed the deceased left a will. It is evident therefore that the deceased died intestate and left behind 2 widows and several children. The dispute is between the sons as the daughters have not claimed any shares in the Estate

The Four sons left behind are **Khaemba, Siundu Ndorobwa, Stephen Marango and Michael Wanjala**.

Michael Wanjala is pitied against his brothers who claim 2 acres each of what he believes to be his. Their reason for asking for 2 acres each is that they each own land elsewhere but want a share from their father's inheritance.

11. The only property left in the name of the deceased at the time of his death is **Bungoma/Kibisi/339**.

Having heard the evidence of the applicants I do not believe when they say and the reason each says he is content with 2 acres their attitude towards this matter betrays them.

I am of the view that the respondent's version is more credible in that their father had intended each son to have 15 acres. That the deceased obtained 4 shares from the settlement scheme as he was the squatter and not his sons and got the shares registered in the names of in his adult sons and was left with the youngest who was later to get his shares. This explains in my considered view why each paid his burden of the loan owed to the settlement scheme including the respondent who cleared his in 1993. This also explains why none of the applicants ever

stayed in **Bungoma/Kibisi/339** and why they seek for a paltry 2 acres each.

12. I further agree with the respondent's Counsel that in considering distribution gifts *inter vivos* ought to be considered in order to ensure fair share of the deceased wealth.

13. The clan may have distributed the land however none of the parties over the years got the distribution which in any event has been disputed. The clan's decision was not binding as it was not consented to nor adopted by any Court.

14. Having considered the evidence it is clear that the land subject matter was intended for the occupation and use of the respondent. Respecting the deceased arrangement, I find and hold that the property **Bungoma/Kibisi/339** belongs to the respondent **Michael Marango**.

15. Costs do abide the events therefore awarded to the respondent.

DATED and DELIVERED at BUNGOMA this 1st day of February, 2018

ALI-ARONI

JUDGE