



**REPUBLIC OF KENYA**

**IN THE HIGH COURT KENYA AT MERU**

**SUCCESSION CAUSE NO. 206 OF 2001**

**IN THE MATTER OF THE ESTATE OF THE LATE PHILLIP M'ANAMPIU RINGERA - DECEASED**

**HELLEN KARIMI .....PETITIONER**

**VS**

**PETER KIRIINYA PHILIP.....1<sup>ST</sup> OBJECTOR**

**MARION MUTHONI PHILIP.....2<sup>ND</sup> OBJECTOR**

**STELLA KARINTHONI M'RINGERA.....3<sup>RD</sup> OBJECTOR**

**JUDGMENT**

The deceased Phillip M'Anampiu Ringera died intestate on 10.9.2000 leaving behind

1. Hellen Karimi – widow
2. Margret Maiti
3. John Marangu
4. Peter Kiriinya
5. Nancy Kinya
6. Karambu N'Anampiu

This according to letter dated 20.7.2001 written by chief of Ntima Location who also indicated that the deceased had written a will on how his property was to be distributed. A copy of the will was attached to the chief's letter. The chief also identified the deceased persons property as:

1. Ntima/Igoki/6066
2. Ntima/Igoki/5142
3. Kiiirua /Nkando/575

The chief Silas Kiriianki also indicated that the deceased was married to Hellen Karimi in charge vide certificate of marriage No. 859607. Hellen Karimi petitioned for Letters of Administration and Grant of Letters of Administration was made to her on 25<sup>th</sup> April 2002.

Stella Kiriinya, Marion Muthomi and Stella Karinthoni filed an application dated 3<sup>rd</sup> June 2002 seeing revocation of grant on the ground that the deceased had left a will and that the grant was obtained by making a false statement and/or concealment of material facts;

That the grant was obtained by means of untrue allegations of facts essential in point of law to justify the grant notwithstanding the allegations were made in ignorance or in advertence. It was sought that an order of prohibition be issued to restrain the petitioner from dealing with parcels No. Ntima/Igoki/5142 and 6066.

The application was supported by the affidavit of Stella Karinthomi M'Ringera sworn on 3<sup>rd</sup> June 2002. The 2<sup>nd</sup> Objector in her testimony on 26.5.2014 said she was wife to the deceased and that Peter Kirinya Phillip was her son and the deceased.

She said that 3<sup>rd</sup> Objector Stella Karithoni was the sister to the deceased. She said that the deceased persons other children were:-

1. John Marangu – His Mother Mwari was never married to the deceased.
2. Nancy Kinya
3. Karambu - Mother never married to the deceased.

Marion Muthoni testified that when she got married to the deceased in 1982 there was no other wife but after a while she discovered the deceased had another wife namely Hellen Karimi who had a daughter known as Margaret Maiti. She produced a photocopy of a will annexed to her affidavit. She urged the court to follow the deceased person's will. She said Parcel No. 6066 was given by the deceased to Peter Kirinya and Nancy and plot No. 751 was given to Peter Kirinya and Karambu. She said that the deceased left nothing to the wives. She said that the deceased was not living with any of the wives when he died. She said she left the deceased earlier than Hellen. She said she was staying on the deceased persons land together with Peter Kirinya. She said Hellen was not residing at the deceased persons land and she didn't know where she stays. She said she stayed with the deceased from 1982 to 1987. She said she differed with the deceased in 1986. She said that it is the deceased who took Peter Kirinya to be baptized. She said Nancy Kinya was her 2<sup>nd</sup> born daughter and she was also baptized in Catholic Church where the father took her and it is shown that her mother is Hellen Karemi the petitioner herein. She said she had 2 other children Wangeci and Kathimo. She said they were from the same father. She said that Peter Kirinya went for her in 2001 from Maua. She said the deceased died 3 days after admission and he had written a will on 21.8.2000 19 days before his death. She said the deceased suffered for a long time. She said she heard that Hellen got married in church in 1992 and 1993 when she was away. She said that she didn't divorce the deceased. She said when she returned to the matrimonial home she didn't find Hellen Karimi. She said she was not involved in making the will.

2<sup>nd</sup> Object witness Stanley M'Kanyua M'mathew 78 years old and Njuri Ncheke Council of Elders said he knew the deceased. He said Marion the 2<sup>nd</sup> Objector was the deceased persons 1<sup>st</sup> wife and that peter Kirinya was the deceased persons son with Marion.

He said he was aware of the will made by the deceased. He said he is the one who wrote the will in the presence of the deceased and his elder sister – 3<sup>rd</sup> Objector.

He said the deceased in the will allocated land to John Marangu L.R. Ntima/Igoki/6066 measuring 0.157 Ha.

L.R. Ntima/Igoki/5142 to go to Peter Kirinya and Nancy Kinya in equal shares. L.R. Kiirua/Nkando was willed to Peter Kirinya and Karambu to share equally. He said that Hellen Karimi deserted the deceased persons home on 27.9.1997 and never returned and there was nothing given to her in the will. The elder also said that the deceased didn't will anything to his daughter Margaret Maiti claiming that she was married and he had not received dowry from her husband. He produced the translated version of the will – Exp 2(a) and (b). He said that they all signed the will. He said that they all signed the will. He said both Hellen Karimi and 2<sup>nd</sup> Objector were not present when the will was made. He said the deceased was his friend for more than 30 years and there homes are separated by a tarmac. He said the deceased was sick for a long time before he died on 10.9.2000. he said the will was written 3 weeks before the deceased died. He said that at the time of making the will Nancy Kinya the deceased persons daughter was not present. He Said Marion was not mentioned in the will. He said Hellen Karimi was mentioned as deceased person's wife. He said he didn't know Karambu's mother but the deceased said she was his daughter. He said Hellen was married in church and there was no dissolution of the marriage between her and the deceased,

The 3<sup>rd</sup> Objector testified as sister of the deceased. She said Hellen had no claim from the deceased as they were separated by the time the deceased died and she didn't attend his burial. She said she was present when the deceased wrote his will in the presence of Stephen Mworira. She said that the deceased used to take care of her and she was at his home when he died. She said the deceased had distributed her estate to his children. She said that Hellen Karimi didn't inform them when she petitioned for Letters of Administration and she said Peter and Nancy are children to Marion whereas John Marangu and Karambu are also deceased children. She said Hellen didn't have any children with the deceased by the time they separated. She said she didn't know how the deceased and Hellen were married but she was not aware they had church wedding. She said she is not married. She could not remember the date the deceased made a will. She said the deceased died 3 months after he made the will. She said she was present when the will was made. She said when the deceased died he was very weak. She said the deceased appointed her to look after his children. She said Marion was married under Meru Customary Law as deceased persons 1<sup>st</sup> wife.

She said Margaret Maiti was staying at the deceased persons home but she doesn't know what she was doing and she didn't know if she was deceased person's daughter. She said if Margaret Maiti was deceased person daughter he would have told her. She said Karambu's mother is alive but was not one of the objectors. In the re-examination she said the deceased was able to talk and give instructions for the will to be written.

The 1<sup>st</sup> Objector – OW4 Peter Kirinya testified and confirmed his mother is Marion Muthoni the 2<sup>nd</sup> Objector. He said that Hellen Karimi petitioned for Letters of Administration without his consent. He said that after deceased died a will was read to them explaining how the deceased distributed his estate but Hellen's name never featured. He said that Hellen deserted the deceased. He said Hellen didn't have any child with the deceased. He said that his mother left when Hellen came to their home. He said that after Hellen left Marion used to visit them frequently. He said that Hellen came to their home as an employee and resided in the same house they were living in. he said that Hellen stayed with them for over 5 years. He said he was learning at Gitoro Primary school when his mother left. That when his mother left it was the deceased who took him to school. He said he is a catholic and receives the Holy communion.

The baptism card issued to Peter Kirinya shows his mother as Hellen Karimi. He confirmed Nancy Kinya is his sister and visits them frequently. He said he currently stays with his mother. He didn't know if Nancy left her baby with Hellen Karimi. He said Margaret Maiti came with Hellen Maiti and he didn't know if she is Hellen's daughter. He said he stayed together with Hellen and Margaret for about 5 years. He said Margaret Maiti used to go to school but he didn't know who paid her school fees.

He said Margaret Maiti beat his father but he could not remember the year. He said Hellen Karimi's nieces and nephews also used to stay with them while going to school. He said he could not remember Karambu's other name although he recognized her as his sister. He said that baptism card was a forgery as he didn't know where it was made.

The Petitioner Hellen Karimi testified that she got married to the deceased in 1985 and they were blessed with 2 children. One of whom died at birth. She said it is Margaret Maiti who is surviving. She gave the names of the deceased other children as;

- John Marangu
- Peter Kirinya
- Nancy Kinya

She said John Mother brought him when he was about to be circumcised and he stayed with them until he got married. She said Peter Kirinya's mother brought him home when he was 5 months old and abandoned him. She said 2<sup>nd</sup> objector was the mother of Kirinya. She said that it is her and the deceased who raised Peter Kirinya. She said the 2<sup>nd</sup> Objector brought and abandoned Nancy Kinya just when she had started learning to walk and she also raised her. She said Marion had never resided in the deceased persons home. She said there was only one house at the home and she is the one who took care of all the children. She said her Kimeru customary marriage was solemnized in church. She said when the deceased died – 3<sup>rd</sup> Objector – took his documents and she only got a letter from church. She wedded in church with the deceased Exp1 in 1992 and nobody objected. She said the deceased didn't have any other wife. She said Peter Kirinya and Nancy were taken care of by her and even their baptism cards bear her name as their mother – Exp2, 3 and 4.

She said she didn't see Karambu and she doesn't know if she is daughter the deceased. She proposed that the deceased person's property be distributed to the widow and children of the deceased equally. She said the deceased was sick for long and it is in 3<sup>rd</sup> year of sickness that his health got worse and he was unconscious 2 weeks before he died. She said he could not have written a will as he could not even hold anything or even understand what was going on. She said that she went to the chief with the deceased persons children before filing petition but Marion was not present. She said she differed with the deceased in the course of his sickness and she went back to her parents home.

She said there was nobody who was staying with the deceased and it is wife to his brother who used to give him food. She said whenever she visited she never saw Marion at home. She said Stella used to come for her home to visit the deceased. She said she brought up the children of the deceased and on that account she is their mother. She said the deceased was in a right state of mind to write a will. She said Stephen M'Imathiu was not known to him and was not a friend or relative of the deceased and could not have visited her. She said that she was staying with Nancy in Nkuene – 20 kms from deceased home.

She said Margaret was staying with the deceased until he died and she went to stay with her. She said she didn't find in Marion at home after deceased persons death. She said Marangu, Kirinya and Nancy stay at home. She said she doesn't know who collects rents at the deceased person's premises. She said she paid Nancy's fees at Materi Girls after the court ordered Kirinya to bring the rent to court. She said she had never seen the will drawn by the deceased. She said the property the deceased had was acquired by them jointly. She said they planted coffee together and from proceeds of coffee they bought L.R. Kiirua /Nkando. She said that they used to have separate accounts for coffee. She said the land in Kiirua was registered in her husband's name. she said that when she differed with the deceased when he was sick they went to church and it is the deceased who proposed they should separate. That when she came back after deceased died Kirinya chased her away.

Nancy Kinya the sister to Peter Kirinya testified that she was brought up by the Petitioner herein whom she knew all along was her mother and she was indicated in her baptismal card as her mother. She said she met Marion Muthomi 2<sup>nd</sup> Objector at her father's burial. She John Marangu was also her brother and Margaret Maiti was also her elder sister. She said she didn't know Karambu. She said when she was in Std 7 she was living with her father who was very sick and that is when her aunty, the 3<sup>rd</sup> Objector herein and Stephen Imathiu wrote will allegedly left by her father. She said the father was lying on the coach and was too weak even to tell them her name and he told them her other name when they asked. She said when Marion the 2<sup>nd</sup> Objector came during her father's burial she had 2 children but thereafter she didn't leave. She said 2<sup>nd</sup> objector occupied Petitioners house. She said it is Hellen the petitioner who came to court to compel Kirinya and Marangu to pay her fees from the rent at houses. She said her father didn't contribute to the content of the will that was written by 3<sup>rd</sup> objector and Stephen Imathiu.

The issues for determination are whether the deceased died leaving a will distributing his estate or not whether the petitioner and 2<sup>nd</sup> objector are wives to the deceased.

Whether the Petitioner, John Marangu, Peter Kirinya, Nancy Kinya, Margaret Maiti, Karambu and Marion are all entitled to inherit from the estate of the deceased.

The 2<sup>nd</sup> Objector confirmed that she was married to the deceased in 1982 and she discovered that the deceased had another wife, the petitioner herein. On the other hand 3<sup>rd</sup> Objector claims that when the deceased married the petitioner, the 2<sup>nd</sup> Objector left. 2<sup>nd</sup> Objector witness Stanley M'Kanyua Imatheu does not say whether he knew the 2 women as deceased person's wives. He said he was a friend to the deceased for close to 30 years but again says he was not a regular visitor to the deceased persons home. He admits Hellen was married to the

deceased in church. The objectors advocate Mr. Gikunda Anampiu did translate the alleged will from Kimeru to English language despite the fact that he is acting for the objectors in the matter.

This court finds that the will is not valid for reasons it was written by parties who are interested in the estate of the deceased. 2<sup>nd</sup> witness no. 2 and 3<sup>rd</sup> objector confirm that at the time the will was written the deceased was sick but not very weak. Nancy Kinya the daughter to the deceased says that the father was too weak to talk and 3<sup>rd</sup> objector and Stanley (Stephen) Imathiu wrote the will on their own. Indeed the deceased who had been sickly for 3 years died 3 weeks after allegedly writing this will.

This court is of the view that this is not a valid will the same having been written by parties who have an interest in the estate at a time when the deceased was not in right state of mind due to infirmity of the body. The deceased therefore died intestate.

The 2<sup>nd</sup> objector didn't depend on the deceased. She came during his burial. She abandoned her children at the deceased home when they were too young to fend for themselves and petition took them for religious instructions and even had her name as their mother because as Nancy Kinya says she didn't know anyone as her mother except Hellen Karimi the petitioner herein. I do find that Marion is not entitled to inherit from the estate. If 1<sup>st</sup> Objector Peter Kirinya wants to accommodate her as his biological mother then well and good but she should vacate the petitioners matrimonial house for her peaceful occupation.

The estate herein should be distributed amongst the petitioner, John Marangu, Margaret Maiti, Peter Kirinya and Nancy Kinya. The deceased and the petitioner got married in church and they sired a child Margaret Maiti and the reasonable expectation would be that he leaves to them an inheritance. Even where the will would have been valid those who are not provided for would have a right to claim to be provided for from the estate of the deceased.

The estate of the deceased shall therefore be distributed equally amongst the dependants/beneficiaries of the deceased. Costs of the cause to be borne by each party.

**HON A. ONG'INJO**

**JUDGE**

12.10.18

Before Adwera J

Penina – Court assistant

Ms Rimita Advocate Holding brief for Manasses Kariuki for petitioner.

Petitioner – Present in person

1<sup>st</sup> Objector – Present in person

2<sup>nd</sup> Objector – Present in person

Gikunda Anampiu for objectors.

**Court**

**Judgment delivered, dated and signed in court on 12.10.2018**

Copies of judgment to be supplied to parties within 7 days upon payment of copying charges.

**HON. A. ONG'INJO**

**JUDGE**