



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

SUCCESSION CAUSE 171 OF 2006

IN THE MATTER OF ESTATE OF NAHASHON MUGAMBI MBWIRIA (DECEASED)

PRISCILLA MAKENA MUGAMBI.....PETITIONER

VERSUS

ANGELINA KAMBA MARETE.....APPLICANT

RULING

Petition for Letters of Administration to the intestate estate of the late Nahashon Mugambi M'Mwiria who died on 30th March 2005 was filed by Priscilla Makena Mugambi widow to the deceased on 9th June 2006.

According to Form P & A5 the deceased was survived by:-

- Priscilla Makena – Widow
- Agnes Karimi – Daughter
- Doreen Gakii – Daughter
- Jackline Kaname – Daughter
- JK– son

Grant was made to Priscilla Makena Mugambi on 25th June 2008. The intestate estate was made up of L.R. No. Nyaki/Giaki/1905 and L.R. Nyaki/Giaki/1572. The value of estate was estimated at Kshs 100,000/=. Jackline Kanamu and Japhet Kirimi were minors at the time the deceased died and when petition for Letters of Administration were filed.

In summons for confirmation of grant the Administratrix proposed distribution of the estate as follows:-

1. L.R. Nyaki/Giaki/1905

- MuriiraMuika Edward to get 2 acres
- Priscilla Makena – balance

2. L.R. Nyaki/Giaki/1572

- Priscilla Makena Mugambi to hold 2 acres in trust for JK (minor)
- Balance to go to Pricilla Makena

A certificate of confirmation was issued to that effect on 23.12.2008.

By an application dated 7th June 2016 Angelina Kamba Marete sought that grant made and confirmed on 10th December 2008 be revoked and titles issued upon implantation of the grant be cancelled and revert to the deceased person's name.

The applicant claimed she was wife to the deceased and produced marriage certificate under marriage Act issued on 23.9.1988.

She said that Murieta Mbwika Edward was not deceased person's son and the chief's letter dated 15th March 2006 left out her name and her children's name. She said she was never informed when petition to her husband's estate was filed. She said she got married to the deceased in 1983 but wedded in 1988.

The applicant said that she had a house at her husband's home but when he got married to petitioner he chased her away and even inflicted a cut on her head.

She said she sired 3 children with the deceased namely

- Timothy Murega
- JK
- Pamela Kathambi

She said that Solomon Gitonga is her brother in law and Priscilla Makena the petitioner herein is the one who was married to her husband after she had been chased away.

She conceded the petitioner had 2 children Agnes and Doreen but she didn't know when they were born. She said she didn't attend her husband's burial because she was not aware he had died.

The petitioner denied that applicant was deceased person's wife. She said the deceased had instructed her that if his son JK born out of wedlock came she should give him land and she provided 2 acres for J according to deceased persons wishes. She said when applicant brought K back home and she was told deceased instructed he should be given land she was a happy and that she didn't come with any other child. She said the applicant had never stayed on the suit land and never made any claim during the lifetime of the deceased.

She said applicant herein as well as Rosalia and Kaburu claimed her husband's land. She wanted the application dismissed. Petitioner said she knew K when he attended deceased person's burial. She said she didn't know K's mother. She said letter dated 15th march 2006 from chief Giaki doesn't give names of the children to the deceased. She said that Murieta Mbwika Edward helped her husband when he was sick.

She said land that the deceased had given to Agnes is that that was sold to Mbwika and he was to get another land for Agnes.

PW3 evidence supported petitioners case that deceased informed PW3 and PW1 together with village elder and Assistant Chief at a meeting that his son born out of wedlock should be given land.

PW2 evidence supported PW1 that deceased sold land that he had intended to gift her to so as to get money for treatment.

The view of this court in consideration of the evidence on record is that the applicant has failed to prove her case on a balance of probabilities. She left in 2000 and even when the deceased died and her son attended burial, she claims she was not aware of the death and yet he was staying with the son JK.

This court finds that JK has been sufficiently provided for and the estate shall remain distributed as ordered on 10th December 2008.

The applicant is at liberty to stay with her son who has been given 2 acres and should not disturb the peace of the petitioner and her children on the remainder of the estate.

The application for revocation dated 7th June 2017 is dismissed with costs to the Respondent/Petitioner.

HON. A.ONG'INJO

JUDGE

RULING SIGNED, DELIVERED AND DATED THIS 8TH DAY OF NOVEMBER 2018.

In the presence of:

C/A: Penina/Kinoti

Mr. Thangacia Adv. – N/A

Mr. Omari Advocate holding brief for Mwirigi

Petitioner:- Present in person

Applicant: N/A

HON. A.ONG'INJO

JUDGE

Mr. Omari

We request for a copy of the ruling.

Order

Copy of Ruling to be supplied at the cost of applicant. Orders of inhibition made on 8.6.2017 is lifted.

HON. A.ONG'INJO

JUDGE