



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

IN THE MATTER OF THE ESTATE OF M'IMANYARA M'IKARA

SUCCESSION CAUSE NO. 426 OF 2008

BRIDGIT NKIROTE MARETE.....PETITIONER

VERSUS

DAVID MUTHURI MURITHI.....1ST OBJECTOR

PETER MUTUMA.....2ND OBJECTOR

JUDGEMENT

David Muthuri and Peter Mutuma objected to grant of Letters of Administration made to Bridgit Nkirote the only child of the deceased herein on the ground that she petitioned for Letters of Administration without informing them.

David Muthuri said he occupies LR 891. He said the deceased had transferred the land to him before he died, but didn't have title as he didn't have money to pay. He said he had original title deeds to prove the deceased had transferred land to him.

1st Objector produced minutes of meeting allegedly held on 14th August 2002 written in Kimeru language. There are also minutes of 22.03.03 written in Kimeru. There are also minutes written on 2.6.2007 in Kimeru. All the minutes are signed by one the secretary. He also produced permit for burial of deceased showing deceased died on 1st April 2007 issued to him. He produced Green cards for L.R. Abothuguchi/Kithurine/691, 320, 891. He produced chiefs letter dated 8th September 2008, certificate of Death. He also produced a letter from Mariara Farmers Co-operative Society Ltd indicating that deceased nominated M'Muthuri as his next of Kin. He produced copy of application for Transfer of Land No. 891 by the deceased to him to LCB and L.R. 320 to Peter Mutuma.

Letters of consents to transfer for the 2 parcels of land are also produced dated 20.9.2005. The applications for consent are dated 10.8.2005. Transfer of Land forms purported to have been signed by the deceased transferring the 2 parcels of land to the 2 objectors have also been produced. 1st objector said that, petitioner occupies only L.R. 691 and not 320 and 891 is not part of the estate of the deceased as they belong to the 2 objectors. He said their uncle the deceased gave them the 2 portions. He said all their parents resided on L.R. 320 before moving to Kibirina.

He said his father got 3 acres of land and not 29 acres. He said 2nd objectors father got less than 8 acres of land in Kibirichia. He said L.R. 691 was bought by the deceased who gave it to petitioner. He said the deceased shared his land in a family meeting. He said the petitioner attended meeting held on 5.9.2007 after deceased died. He said deceased had developed L.R. 891 but he had also developed it further. He said that petitioner didn't place him on the property. He said he was taking care of the deceased. He said Murithi was not employed by petitioner to take care of her father. He said he employed Murithi. He said the deceased said it was 1st objector to inherit his property. He confirmed transfer forms are not dated. He said that petitioner was called to LCB and she refused to attend and deceased gave him title to L.R. 691 for her. He said he didn't acquire titles illegally. He said that he didn't have money to complete transfers.

2nd Objector said that L.R. 320 belonged to family of his grandfathers. He said that 1st objector occupied L.R. 891 after the deceased died. The 3rd objector witness said petitioner has never lived on LR 320 and 891. He said he attended meetings during lifetime of the deceased where Mworira recorded minutes. He said that Peter was his step brother whereas David was his cousin. He confirmed that petitioner was daughter of the deceased. He said the deceased had land in Naromoru which should be in list of assets. He said titles to deceased person's properties are kept by 1st objectors. He said he saw transfer documents thumbprinted by deceased but they were not registered.

4th Objector witness said he was family secretary and some minutes he took were in court. He said that the deceased gave land to the 2 objectors herein.

He said the 2 parcels belonged to the clan whereas the parcel that deceased bought he gave to the petitioner. He said that the petitioner came

the very last days of the deceased person's life. He said petitioner lives in Kibirichia and Kitale. He admitted the deceased had developed 891. He said the fathers of David and Peter were given land in Kibirichia and Charia.

He said family land was registered in the name of the deceased. He said he was not present when deceased went to LCB. He said transfer of land to Objectors was not complete. He said that process of going to LCB was after the family met and deceased intended to give his land to objectors.

PW4 said it was in 2006 that deceased said he intended to transfer land. He confirmed consent was acquired in 2005 but no steps were taken to register objectors.

The 5th objector witness said that LR 320 and 891 are occupied by objectors. He said he was one of the elders that the deceased called when he was too sick with a purpose of distributing his estate. He said the deceased was not forced to give out his land. He said that deceased persons titles are in custody of 1st objector and they are in the names of the deceased. He said that Bridgit the petitioner was present at the meeting called by her father but she didn't raise objection.

6th Objector witness said that L.R. 320 and 891 were family land and they are occupied by objectors. She said 1st objector is her brother. She said L.R. 691 was given to petitioner. She said the deceased went to the D.Os office in Katheri to have L.R. 320 and 891 transferred to the objectors.

She said her mother is alive and lives in Charia, she said that Peter Mutuma has 7.8 siblings and they live in Kibirichia. She said that the deceased lived on L.R. 891 which is family land and it can't be sold. She said she worked at Lands office but didn't assist objectors make the documents presented in court. She said nobody has removed objectors from the 2 parcels.

The petitioner said she petitioned for Letters of Administration to her father's estate. She said LE 320,891 and 691 belong to her father. She said that deceased told her everyone had their own land. She said when her father died she found title deeds which were in the house had been taken. She said there is no meeting she attended during the lifetime of her father. She said she didn't talk during the meeting held after her father's death because she didn't like what was being discussed. She said objectors took occupation of her father's pieces of land after he died. She said she went with objectors to D.O's officer in Katheri and she was given a letter identifying of the deceased. She said 1st objectors father has land in Gaitu and Peters father -2nd objector has land in Kiirua. She said her grandfather gave her father land and also gave land to the 2 objectors fathers, she said her father bought one of the parcels. She said that her father didn't go to LCB to transfer land to Objections. She said she reported to CID that her father's titles had been stolen but she had pity on her cousins. She said when the objectors were taking her father's cows, she also went to take some and they called police to arrest her. She said she has 100 acres of land in Kitale. She also has land in Kibirichia. She said she stayed with her father when he was sick because her mother died long time ago. She said land in Kibirichia is for her father in law and the one in Kitale is for her husband.

In consideration of the evidence on record and the submissions made the issues for determination are:-

1. Whether the objectors were given gifts by the deceased during his lifetime?
2. Whether LR No. 320 and 891 are ancestral land.
3. Whether 1st Objector was justified to be given land as allegations he took care of the deceased.
4. Whether possession of land by petitioner in Kitale and Kibirichia is reason enough to deny her birthright.
5. Whether L.R. 320 and 891 were registered in name of the deceased as a trustee of clan/family land.

It is not disputed that the father of 1st objector as well as father to 2nd objector who is step brother to the 3rd witness were given land by the petitioners grandfather in the same manner the deceased was given. It appears that the problem is either that the deceased gave birth to only one child and to make matters worse just a daughter and therefore the alleged clan cannot be inherited by her.

The 6th objector witness said that 1st objector has about 8 siblings and 2nd objector has almost similar number of siblings. One would ask how the petitioner herein should be liable to the number of children one chooses to have so that she is deprived of her inheritance. The law of succession is very clear. The deceased died and left just one daughter. All the assets registered in the name of the deceased devolve to that one child and it doesn't matter what other property she has. The 100 acres of land in Kitale was acquired by her husband, the same way the objectors herein are not barred from acquiring similar properties. The objectors according to their own witnesses evidence occupied land after the deceased died. If it is true, he gave them gifts as alleged, why did they wait for him to die before taking occupation. The minutes of meetings allegedly called by the deceased before he died, the applications to Land Control Board and alleged consents as well as the undated transfer forms are documents which this cannot rely on to find that the deceased gave any gifts to the objectors, more so when it is alleged they were made long before he died and they were not completed.

Whether there would be need to interrogate those documents in a different forum to establish that it is not a conspiracy to deprive petitioner of her rightful inheritance. The objectors claim the deceased said it is 1st objectors father who was to inherit his property. There is no valid will produced to that effect. Claim that L.R. 320 and 981 are ancestral lands and can't be sold was raised by the 6th witness or former employed of lands Registry and the sister of one of the objectors. Whether ancestral land held in trust are issues which can only be declared by the Environment & Land court and therefore succession cause is not the proper forum.

This court finds that objection by the objectors herein can't stand. The same is dismissed with costs to petition. Grant of Letters of

Administration is made to Bridgit Nkirote Marete the daughter of the deceased herein and the assets in the name of the deceased shall devolve to her in whole as sole beneficiary. A certificate will issue to that effect. Orders accordingly.

HON. A.ONG'INJO

JUDGE

6.12.2018

Before Adwera- Ong'injo J

Kinoti – C/A

Mr Gichunge Advocate holding brief for Rimita for Petitioner.

Mr Gikunda holding brief for Kiogora Arithi for Objectors.

Court

Judgment delivered, dated and signed in court on this 6th Day of December 2018.

HON. A.ONG'INJO

JUDGE