



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MERU
IN THE MATTER OF THE ESTATE OF MWANGI KIBANGA
SUCCESSION CAUSE NO. 651 OF 2009
JOYCE CHIAKUTHI MWANGI.....PETITIONER
VERSUS
SAMUEL KARIUKI MWANGI.....PROTESTOR
MUGAMBI M'ITHIRI.....INTERESTED PARTY
RULING

1. The Deceased herein *Mwangi Kibanga* died in the year 1996. The petitioner herein filed for Letters of Administration on 11th August 2010 listing the following as the Survivors of the deceased as per the letter dated 16th November 2009 from the Chief Mitunguu Location as hereunder;

- i. Joyce ChiakuthiMwangi- Wife**
- ii. Beatrice WanjaMwagu- Daughter- Married**
- iii. Francis M. Mwangi- Son**
- iv. James GitongaMwangi- Son**

2. The letters for Administration of the Estate was gazetted on 19th March 2010 and grant for letters of administration issued on 8th September 2010. The petitioner filed an application for Confirmation of Grant on 8THSeptember 2010.

3. The Protestor However filed for the revocation/ Annulment of Grant on 30th September 2010 contesting that the deceased had other wives, *Margaret Wambui (deceased) SiphilaGaiti (now deceased)*, and Children not listed in the Petition for letters of Administration. In particular he listed the following as the Surviving Children of the deceased;

- i. Francis M. Mwangi**
- ii. Irene Nyawira**
- iii. Laban Kabogoro**
- iv. Paul MainaMwangi**
- v. Lucy MugureMwangi**
- vi. Virginia Kawira**
- vii. Lilian Kajuju**
- viii. Beatrice Nyaguthii**

ix. Rahab Muthoni

x. Samuel. K. Mwangi

4. The Interested party filed an Affidavit Dated 7th November 2013 claiming he had Purchased L.R. NO. ABOTHUGUCHI/LOWER-KIIJA/245 from the petitioner herein and that he ought to be included in these proceedings. He averred that the Application for Confirmation of Grant had issued him the whole Parcel in L.R. NO. ABOTHUGUCHI/LOWER-KIIJA/245.

5. Vide a Ruling dated 5th July 2018 this Honourable Court revoked the grant issued on 30th September 2010 and appointed Samuel KariukiMwangi and Joyce Chiakuthi as joint administrators

6. The matter proceeded via *Viva Voce* evidence on diverse dates. The Protestor called three (3) witnesses.

Protestor's Testimony

7. **PW1**, the Protestor herein, restated what he had stated in the summons for revocation/ Annulment of Grant. He testified that the petitioner resided with the deceased in Mitinguu for three years in the Late 1980's. That the deceased was buried in Kijja and so was his mother who died in 1976. That the deceased had eleven (11) children in different parts of the Country. He testified that James Gatuma is not his father's Son and that there is no evidence to show that the petitioner bought the land in L.R. NO. ABOTHUGUCHI/LOWER-KIIJA/245.

8. Pw2 **Francis Macharia Mwangi** stated that he is the 1st Born Son of the deceased. He claimed to have been chased from the land in Kijja and is now currently staying with a neighbour. That the land in L.R. NO. ABOTHUGUCHI/LOWER-KIIJA/245 is registered in the name of his father hence it is his father's land. That there is nothing to show that the same was bought by the petitioner. That the petitioner was chased away by the deceased in the year 1983. That the petitioner had equally misdirected/misrepresented that he was deceased but that is not the case. In his statement he had averred that BeatriceWanja NAD James Gitonga were not children of the deceased.

9. Pw3 **Lucy Mugure Mwangi** testified that she is a daughter of the deceased and resides in Mitunguu. That they stayed with her mother and the deceased in the land in L.R. NO. ABOTHUGUCHI/LOWER-KIIJA/245. Her mother was *Siphila Gaiti (deceased)* who passed on two weeks from the date of her testimony. She testified that Siphila Gaiti had 3 children and that the petitioner had restricted them from entering the land in L.R. NO. ABOTHUGUCHI/LOWER-KIIJA/245.

Petitioner's Testimony

10. The petitioner also called 3 witnesses

11. The petitioner, Joyce Chiakuthi Mwangi was the first to testify. She testified that the deceased was her husband with whom she had three(3) children i.e. Beatrice, James and Jedidah. That she bought the parcel of land in L.R. NO. ABOTHUGUCHI/LOWER-KIIJA/245 from one Julius M'Mwari M'Mwamba and they wrote a sale Agreement to that effect. That her house was however burnt hence she could not find the Sale Agreement. That at the time of the purchase of the Land she did not have an Identity Card so she caused the same to be registered in the name of the deceased. That she does not know the protestor herein. That during the burial of the deceased she was chased away by the protestor and other family members.

12. The 2nd witness was **Julius M'MwariM'Mwamba** who claimed that he sold the land in L.R. NO. ABOTHUGUCHI/LOWER-KIIJA/245 measuring 5 Acres to the petitioner and her husband for a sum of Kshs. 1500 and a cock in the year 1970 but the same was registered in the name of the deceased in the year 1990 because the petitioner did not have an Identity Card.

13. The 3RD witness **Stanley Mutwiri Arimi** testified that he used to be the Area administrator of Kijja Location and a neighbour of the deceased. That he was present during the burial of the deceased and on that day he identified Macharia and Lucy. That he was also made aware that Samuel Kariuki and others were chasing the petitioner from the Land and when he asked them why they were doing the same they claimed that they do not recognise the petitioner.

Interested Party's Testimony

14. The Interested Party also testified. His testimony was to the effect that he bought the land in question from the Petitioner herein on 23.4.2010 and during the pendency of these proceedings. That he had taken occupation for over 6 years but was chased away by Macharia, Kamau and Mugure. That he had charged the protestor and his brothers in Nkubu Law Courts but they have since been acquitted. That prior to the Sale he had confirmed from the Area chief that the deceased had 1 wife and 3 children.

Analysis and Determination

15. From the evidence on record and the Submissions by the Protestor and the Petitioner the following present themselves as the issues for determination;

a. Who are the Beneficiaries of the Estate?

b. Distribution of the estate

a. Who are the Beneficiaries of the Estate?

16. From the evidence on record and the testimonies of the witnesses herein it has been established that the deceased had three wives and one property (estate) i.e. in L.R. NO. ABOTHUGUCHI/LOWER-KIJA/245.

17. Two of the wives are now deceased hence only one spouse remains.

18. The protestor had contested that the deceased had not sired any children with the Petitioner but this part of the evidence was substantially not proven by the Protestor. The same was equally not uncontroverted during the testimony of the protestor.

19. It then follows that the Children, Beatrice Wanja, James Gitonga and Jedidah Macharia are children of the deceased with the protestor herein.

20. The survivors of the deceased and in relation to this Cause and as presented from the evidence on record therefore are;

i. Joyce Chiakuthi

ii. Beatrice Wanja

iii. James Gitonga

iv. JedidahMacharia

v. Francis M. Mwangi

vi. Irene Nyawira

vii. Laban Kabogoro

viii. Paul MainaMwangi

ix. Lucy MugureMwangi

x. Virginia Kawira

xi. Lilian Kajuju

xii. Beatrice Nyaguthii

xiii. Rahab Muthoni

xiv. Samuel. K. Mwangi

21. The interested party herein was sold the property in L.R. NO. ABOTHUGUCHI/LOWER-KIJA/245 during the pendency of this proceedings.

22. The same property was still the property of the estate and the estate and the same could not have passed to the interested party herein. Indeed this Court factored this much when it revoked the grant issued to the petitioner herein when vide Ruling dated 5th July 2018 it stated that any transactions arising therefrom are annulled.

23. Section 45 of the Laws of Succession Act prohibits dealing with properties belonging to a deceased person before obtaining grant. It states:-

“(1) Except so far as expressly authorized by this Act, or by any other written law or by a grant of representation under this Act, no person shall, for any purpose take possession or dispose of, or otherwise intermeddle with any free property of a deceased person.”

24. A similar position as this case was seen in **IN THE MATTER OF THE ESTATE OF M’MUGAMBI M’GUOKO Alias MUGAMBI GWOKO alias MUGAMBI GUOKO(DECEASED) (2011) eKLR the Court Held as much;**

“.....The Section is clear that the Status Quo as of the time of the deceased ought to be maintained. The deceased estate ought to be preserved as of the time of death. The petitioner’s acts of attempting to sell or selling of the deceased property to anyone including Mr. Ngondoki is illegal and null and void for it is against Section 45 of The Law of Succession Act.

Section 82(ii) of The Law of Succession Act provides:-

“(ii) No immovable property shall be sold before confirmation of grant”

It is therefore clear that the sale of the undisclosed portion to Mr. Ngondoki is null and void; and no part of deceased estate can be transferred to such a purchaser. This is indeed an act of intermeddling with deceased estate....”

25. Adopting the decision above it goes to show that the Sale Agreement between the Petitioner and the interested Party is a clear case of Intermeddling with the Estate of the deceased and therefore the same is null and void and cannot be adhered to. It also follows that the interested party is not a beneficiary of the estate.

26. As for whether the land Parcel in L.R. NO. ABOTHUGUCHI/LOWER-KIIJA/245 belonged to the Petitioner. The circumstances leading to the purchase is not clear. Whereas the petitioner states that the same was sold in the year 1990, Julius M’Mwari claims he sold the same in the year 1972. In cross-examination he avers that he sold the same to the petitioner and the deceased. In also a contradictory point of departure from the petitioner’s testimony he stated that there was no Sale Agreement whereas the Petitioner said that there was a Sale Agreement entered into between herself and Julius M’Mwari which got burnt. She averred that the same could not be transferred at the time because she did not have an I.D. this averment does not hold as a plausible reason to transfer the same to the deceased. The property would have been held in trust on her behalf. This Court is Cognizance of the fact that at the time, 1990, the *Married Women Property Act, 1882* had already been enacted and women would take up property as *feme solo* without the intervention of any trustee. *Section 24 of the Land Registration Act* also confers the person registered absolute ownership to that land.

24. Interest conferred by registration Subject to this Act—

(a) the registration of a person as the proprietor of land shall vest in that person the absolute ownership of that land together with all rights and privileges belonging or appurtenant thereto;

27. As regards possession the same is shown by the testimony of the Protestor’s witnesses who mutually stated that the Siphila Gaiti and Francis Macharia resided in the property in question.

Distribution of the Estate

28. Having found that the deceased was in a polygamous relationship prior to his death, beneficiaries are as listed above and the estate property is L.R. NO. ABOTHUGUCHI/LOWER-KIIJA/245 the estate shall therefore devolve to the beneficiaries of the estate in terms of *Section 40 of the Law of Succession Act*. The same provides;

40. (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.

L.R. NO. ABOTHUGUCHI/LOWER-KIIJA/245 (5 ACRE 02) Joyce Chiakuthi

i. Beatrice Wanja

ii. James Gitonga

iii. Jedidah Macharia

iv. Francis M. Mwangi

v. Irene Nyawira

vi. Laban Kabogoro EQUALLY

vii. Paul Maina Mwangi

viii. Lucy Mugure Mwangi

ix. Virginia Kawira

x. Lilian Kajuju

xi. Beatrice Nyaguthii

xii. Rahab Muthoni

xiii. Samuel. K. Mwangi

No orders as to costs.

HON. A'ONG'INJO

JUDGE

Mrs Wambugu Advocate holding brief for Rimita for Interested party,

Mr Gichunge Advocate for protester – N/A

Mr Kimathi Kiara for Petitioner

Petitioner –N/A

Protester- present in person

Interested party – present in person

Ruling delivered, dated and signed in court on the 6th Day of December 2018.

Dr to notify the advocates of the ruling.

HON A. ONG'INJO

JUDGE