



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KITALE

SUCCESSION CAUSE NO. 174 OF 2012

IN THE MATTER OF ESTATE OF LATE SAMUEL MULIKA TONJEDECEASED

AND

MARGARET JONATHAN MURIKA.....PETITIONER

VERSUS

JUDITH NASIMIYU MANDILA.....1ST OBJECTOR/APPLICANT

MOSES LUCHERI MULIKA2ND OBJECTOR/APPLICANT

JUDGMENT

The deceased herein died on 7/9/2009 aged 92 years. The petitioner Margaret Jonathan Mulika applied for letters of administration annexing a written will dated 7/1/2007. She names herself a beneficiary together with Jones Walima Jonathan. The said petitioner is the surviving daughter of the deceased. On 1/11/2012 this court granted her letters of administration.

The objector Judith Nasimiyu Mandila did file objection proceedings claiming inter alia that she was a beneficiary to that estate since she was the wife to the late Luka Mulika the son to the deceased herein. The said Luka Mulika predeceased his father and had left behind the following children;

- 1) Moses Mulika
- 2) Nakhumicha Mulika
- 3) Fatuma Mulika
- 4) Joyce Mulika
- 5) Dorine Mulika
- 6) Martha Isaa Mulika
- 7) David Wayne Mulika
- 8) Sidney Mulika

She further denied that the deceased had made a written will and sold land parcel Number Kiminini/Matunda Block 4 (Cheptarit/79 to one Henry Wafula Satia.

The matter was ordered to proceed by way of viva voce evidence and the evidence of the parties and their witnesses can be summarised as hereunder;

PW1 Judith Nasimiyu Mandila the objector claimed that she was the widow of Luka Mulika the son to the deceased. He stated that the said Luka Mulika had married other women including her sister who passed away. That she subsequently married him and had 2 children with him David Wayne Mulika and Sidney Mutali Mulika. That they were living at land parcel No. Kiminini/Cheptarit /79 with her father -in-law. It is this land that her husband was buried.

She acknowledged that one Henry Satia purchased land from the deceased and the deceased moved away to some land at Chekalini. According to her the sale agreement was a fraud and it was undertaken after the deceased had died. She further stated in cross-examination that the deceased was a dependent of her son Luka Mulika all through.

PW2 Zebedayo Mulika Ngome testified that the deceased was his cousin and that he knew his son prior to his death. She confirmed that the objector stayed on the land together with Lukas other children. He further stated that when the deceased died it was agreed as a clan that the objector would stay in that land. On cross-examination he admitted that the deceased sold the land so as to purchase another land at Chekalini where he stayed for 2 years before he died. He further stated that when the deceased was moving to Chekalini the objector brought police officers who tried to stop him on allegation that he had taken his property. The matter was however resolved and the objector given some cows.

PW3 Hassan Ndamwe Wakoli the Chief Sikhendu Location testified that he knew the parties as they were his subjects. He was aware that the deceased Luka was buried at Land No 97 Cheptarit. That the petitioner came with Henry Satia where they entered into an agreement where Satia completed the purchase consideration which had not been factored in the earlier agreement with the deceased. He admitted that Henry Satia resided on the land.

PW4 Moses Lucheri Mulika is the son to Luka Mulika and therefore a grandson to the deceased. He confirmed that his father was buried at Plot No 79 and that after his death he was chased away by her aunties. He alleged that his father's grave was desecrated and bones thrown away. He said that it was the objector who assisted his grandfather including provisions of food and other necessities. He stated further on cross-examination that he went with him to Chekalini farm but was chased by her aunties after the death of his grandfather.

DW1 – Margaret Jonathan Mulika testified that she was the surviving child to the deceased. The other 5 children including Luka have all passed away. She said that the suit land No 79 was an exchange between the deceased and one Wailliam Kutto who moved to Moiben in Uasin Gishu where the deceased had land before the land clashes.

She said that the deceased was staying with Luka before his brutal death. Luka had 2 wives Florence and Roseline Shitawa. Luka who was the principal of Kiungani Secondary school had properties which included cows, a plot at Kimilili and a vehicle. Florence the first wife had 4 children but divorced. Roseline the 2nd wife died before Luka and had 2 children. The objector herein was the sister to Roseline although the clan did not recognise her.

She said that the deceased sold the land including their house to Franco, Adriano Luka Munokos family, Matava, Benard Wafula and Henry Satia. The deceased after selling the land moved to Chekalini Kormaet where he bought 4.2 acres. His relationship with the objector was not good as she even attempted to block him from moving to Chekalini on allegation that he had stolen her cows. Eventually she remained with 4 cows and the deceased took 3 cows.

She said that her marriage broke down in 1998 and she moved back home to stay with the father. When he moved to Chekalini he stayed for 2 years before he died. He left behind a written Will through one Zablun Mokuia Advocate. The will was read to them 3 days after his death. She admitted receiving money from Satia after the deceased had died.

On cross-examination she said that the deceased sold the land after the death of Luka as he wanted to move to where his people were.

DW2 Enock Machafu Rasa a Bishop with African Church of the Holy Spirit testified that the deceased was a member of his church. He said that the deceased died at Chekalini and he buried him. He said that he knew Luka his son as they were circumcised together and that he knew his wives too. He said that Samuel the deceased was dependent on Luka and they were living in the same house. The house belonged to the deceased and not Luka. It was a European house. Luka did not build any house. He is aware that the deceased sold the entire Muungano land and moved away together with his family in particular the petitioner to Chekalini.

DW3 Henry Wafula Satia purchased 2 acres out of Plot No 79 at Muungano. He said that he did purchase the same in the presence of the deceased and her 2 daughters Margaret and Jones on 16/12/2008. By then the objector was not present.

Thereafter the deceased purchase land at Chekalini where he moved on 15/12/2007. He also assisted him in moving the things although at some point they met the objector who alleged that the deceased had taken some of her cows. The matter was resolved at the police station. He insisted that it was the deceased who sold the land to him and not the daughter. He said that the objector has been harassing his family since moving to the house on 16/12/2007.

At the close of the parties cases the court ordered each to file their respective submissions but none did.

Analysis and Determination

Having heard all the parties it is not in dispute that the petitioner is the daughter to the deceased whereas the objector was his daughter in law although she was married to the deceased son Luka Mulika after his sister who was married to the said Luka died. There was no evidence however of their marriage. Some of the witnesses denied the same but it appears that as at the time of Lukas death they were living together as husband and wife.

The said Luka was staying together with his father, the deceased before his brutal death in the year 2000 after being shot. He was the principal of Kiungani Secondary school. He had children from other 3 wives I had earlier enumerated. Its also not in dispute that land parcel No 79 Kiungani was purchased by the deceased after an exchange with on William Kutto and on the said land there was a European house where he stayed with Luka.

Equally its not disputed that he did sell the said Kiungani land to among others Henry Satia and purchased another land at Chekalini where he moved in the year 2007, 2 years before his demise.

Further that as he moved to Chekalini the process was stopped by the objector on the grounds that he had taken her cows and the issue was resolved at the police station where the objector was given 4 cows and the deceased remained with 3 cows.

It appears from the adduced evidence that the rest of Lukas children are all adults and apart from PW3 they appear to be spread all over. The objector however did not demonstrate that they were being supported by the deceased.

The petitioner from the evidence stated that her marriage failed in the year 1998 and from then she came back home to support his father till she moved with him to Chekalini. Her children however stay elsewhere and not with her.

At the conclusion of their evidence non of the parties challenged the Will prepared by Zablon Mokuu Advocate. There was no evidence to suggest that the same was not prepared by the deceased or it was fraudulently done. The objector did not deem calling the said Advocate or at all and consequently I easily conclude that the Will was not challenged and in short the will was not challenged.

A close look at the said Will shows that the deceased gave responsibility to the petitioner to administer the estate. He also recognised that he had sold land to other persons including Henry Satia and that the purchasers ought not to be disturbed. I believe this is in accord with the testimonies of both the petitioner and the objector that the deceased had sold his land.

As regards the objector it is clear that the deceased desired that she benefit from the proceeds from the estate of her husband Luka, the deceased's son. This directive agrees with the affidavit of the deceased dated 14/11/2000 which he deposed that the objector should enjoy all the benefits of Luka as he took care of him.

If in my view, the deceased wanted to give a share to the objector her daughter in law or the grand children, I do not find any difficulty in him having stated so in the Will.

All in all I do find the written Will unchallenged. The same was well executed as per the Succession Act. The two witnesses Andrew S. Munage Manderu and Enoke Machafu Rasa were witnesses and Advocate Mokuu executed.

Consequently I do not find the objection meritorious. The objector together with the deceased grandchildren ought to benefit from the estate of the late Luka Mulika. In any case there is no evidence that the late Luka Mulika participated in any way in the purchase of Kiungani farm or that at Chekalini.

The Will dated 7/1/2007 is hereby confirmed as valid and the Administrator Margaret Mulika be at Liberty to apply for the grant issued on 1/11/2012 to be confirmed.

Each party to bear their respective costs.

Delivered this 15th day of March 2017

H.K. CHEMITEI

JUDGE

In the presence of:

Gacathi for Sifuna for the Petitioner

No appearance for the Objector

Kirong – Court Assistant