



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KITALE
SUCCESSION CAUSE NO. 327 OF 1998

PATRICK MUKWALAFU WANYONYIDECEASED

VERSUS

JOSEPHINE NAFULA WABOMBA)

JUDITH KHALAKHA WANYONYI)

GRACE KISIANG'ANI) PETITIONERS

JUDGEMENT

1. By his summons for revocation dated 4th October 2005, the objector herein applied that the grant confirmed on 15th September 2000 permitting Josephine Nafula Wabomba, Judith Khalakha Wanyonyi and Grace Kalakha Kisiangani to be joined administrators of the estate of the deceased herein be annulled.

2. This matter then proceeded by way of viva voce evidence although the court in the course of hearing determined that there was no need to have other witnesses as the objector had equal chance and right to share in the deceased estate. The parties were therefore advised to file written submissions.

3. From the evidence on record it is not contested that as at the time of his death, the deceased had married the three ladies namely;

a) **Mary Nakhumicha Wafula** (now deceased) who had sired the following children with the deceased.

(1) Kennedy Mukwalafu

2) Elizabeth N. Wafula

3) Loraine Nasimiyu

4) Sheila Nangila Wafula

b) **Josephine Wabomba** who sired

(i) Lydia Wafula

ii) Phanice Wafula

iii) Kevin Wafula

c) 3rd wife – **Judith Kalakha** (deceased) who sired

i) Martin Wachiye

ii) George Wafula

4. At the centre of the dispute is the 40 acres parcel of land purchased by the deceased from one Dr Noah Wekesa. According to the attached letter from Dr Wekesa, the deceased purchase the land in early 1990 and that he went through all the procedures of conveyancing save that he could not transfer to him as he passed on.

In his letter dated 6th April 2004 he concluded that he only knew the deceased children as Kennedy Mukwalafu Wafula, Elizabeth Nakhungu Wafula and Loraine Nasimiyu Wafula and Sheila Nangila (Ambuya) Wafula.

5. The evidence by their objector does not contradict this. He however contents that the parcel of land was purchased by his father jointly with his mother who was the first wife.

6. His witness No. 2 **Juma Kisiangani** testified that part of the purchase consideration paid to Dr Wekesa is the deceased motor vehicle Reg. No. KAA 038 Peagot 306 as well as a BMU Motor vehicle. He conceded though that the issue of motor vehicle is not mentioned anywhere in the said purchase.

7. DW3 Virginia Nanyama the deceased mother conceded that the deceased married Josephine and Mary but does not recall the 3rd wife. She said that both the deceased and Mary were graduates and were employed. On her further evidence she confirmed that the deceased had a 3rd wife and had 2 children with the deceased.

8. I have read the submissions by both counsels which in effect agree on the issues earlier alluded. The question however is how should the court proceed to share out the 40 acres parcel of land?

9. **Section 40(1) of the Succession Act Cap 160** provides as hereunder;

“Where an intestate has married more than once under any system of law permitting polygamy, his personal and household effect and 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.”

10. The objector submitted that their household is entitled to 20 acres as their mother contributed to the purchase of the same. This however has not been barked up with any tangible evidence. Neither did Dr. Wekesa indicate that he received separate purchase consideration from Mary, the deceased first widow. In my view therefore the only logical conclusion is that the deceased three houses ought to have equal shares in the estate.

11. Apparently and unfortunately the deceased 1st and 3rd wives have since passed on leaving behind the 2nd widow. In accordance with Section 40 therefore it would be imperative that she gets her share as the law provides.

12. The sum total of my finding therefore is that the 40 acres parcel of land left behind by the deceased be divided as follows;-

- | | |
|-------------------------------|----------------|
| 1) Kennedy Mukhalafu | 4 acres |
| 2) Elizabeth N. Wafula | 4 acres |

- 3) **Lorraine Nasimiyu Wafula 4 acres**
- 4) **Sheila Nangila Wafula 4 acres**
- 5) **Josephine Wabomba 4 acres**
- 6) **Lydia Wafula 4 acres**
- 7) **Phanice Wafula 4 acres**
- 8) **Kevin Wafula 4 acres**
- 9) **Martin Wachiye 4 acres**
- 10) **George Wafula 4 acres**

13. I note that the other 2 administrators of the estate have since passed on and therefore its only Josephine Wabomba who is alive. In the premises and for fair conclusion of this estate I do appoint the objector herein Kennedy Mukwalafu Wafula to join Josephine Wafula Wabomba as administrator of the estate.

14. The grant herein therefore be confirmed appropriately and as per the distribution above.

15. This being a family issue each party do meet their respective costs.

Delivered this 19th day of July, 2017.

H.K. CHEMITEI

JUDGE

In the presence of:

Khisa for the Petitioner

No appearance for Okile for the Objector.

Silvia - Court Assistant

H.K. CHEMITEI

JUDGE

19/7/2017