



REBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MALINDI

SUCCESSION CAUSE NO. 44 OF 2011

IN THE MATTER OF THE ESTATE OF KEA MWARO JEFWA

KENGA MWERI BAYA APPLICANT

VERSUS

KAZUNGU MWARO JEFWA RESPONDENT

JUDGEMENT

The late KEA WARE JEFA died on the 26.12.1994. The deceased was a bachelor and left 0 child. He owned Plot Number GEDE/KIREPWE/B/127 measuring 0.26 Hectares. According to the Gede Location Chief's letter dated 2.4.2012, the deceased left the following as his heirs: -

1. Kazungu Mwaro Jefa
2. Dama Yaa Magondu
3. Kahindi Mwaro Magondu
4. Kenga Mweri Baya

The same information is contained in a letter from the Malindi District Commissioner's office of the same date. Further, on 20.2.2014 counsels for both parties filed a consent in court indicating that the same four people are the lawful beneficiaries of the deceased's estate.

The only pending issue is how to distribute the estate. The objector, Kenga Mweri Bay is a brother to the deceased. The petitioner, Kazungu Mwero Jefwa is also the deceased's brother. The objector's proposed mode of distribution is that the property be valued independent of the building standing on the plot and sold without the improvements. Thereafter, the proceeds be divided equally into four.

The petitioner's position is that the developments on the ground were done by the late Patrick Jefwa who was the son of the late Kahindi Mwero Magondu. Kahindi Mwaro Magondu is a brother to the two parties herein. Although the petitioner maintains that he was sold two rooms by the late Patrick Jefwa, no supporting document was annexed. The petitioner's position is that their sister, Dama Yaa Magondu should not be considered as she is married and is not claiming anything. It is also averred that the objector, Kenga Mweri Baya is now deceased and left no wife or children. The petitioner maintains that he filed this succession cause and has spent a lot of money including valuation of the developments on the plot.

The petitioner's position is that only two beneficiaries are now left, himself and the children of his late brother, Kahindi Mwero Magondu. His proposed mode of distribution is that the plot be shared

equally between himself and the children of his late brother or alternatively the plot be sold and the proceeds be shared equally.

It is evidence that the objector wanted his share of the estate. No death certificate has been produced to show that the objector is now deceased. I do not doubt the petitioner's contention that the objector is now deceased. However, the objector instructed advocates to act on his behalf and his estate must be determined separately. It is possible he had his own debts and creditors.

Since Dama has not come forward to lay a claim on the state, I do find that the estate shall be shared equally among the three brothers. There are the two deceased, Kahindi Mwaro Magondu and Kenga Mweri Baya and the petitioner, Kazungu Mwero Jefwa. I also note that the petitioner incurred costs in filing this cause and processing title deed.

The children of the late Kahindi Mwero Magondu have built properties on the land. They are willing to pay off their uncle's shares and retain the land. It is clear that they have benefited from that all this time. Harmaton Jefa, one of the sons of Kahindi Mwero Magondu swore an affidavit on 7th October, 2015 confirming that they are willing to pay off the beneficiaries.

The valuation by ultimate Valuers done in March, 2012 on the developments on the land gave a value of Kshs.927,000/=. Unfortunately, that valuation did not give a fair value of the land alone. I do proceed and order that the suit land, Plot number GEDE/KIPEPWE/B/127 be valued excluding the developments thereon. The value thereof shall constitute the residue of the deceased's estate. I do order that a sum of Kshs.100,000/= shall be deducted and paid to the petitioner, Kazungu Mwero Jefwa to cater for all these expenses. The remaining balance shall be distributed equally between the three brothers of the deceased. Since Kahindi Mwero Jefwa is deceased, his sons shall therefore not pay that portion as they are the ones to compensate the beneficiaries. The sons of Kahindi Mwero Magondu shall pay the petitioner's share and deposit the share of the objector, Kenga Mwero Baya in court.

For purposes of clarity, the suit land shall be valued without the developments. Upon valuation, those who have developed the land shall pay off the beneficiaries to the extent of the valuation. The petitioner shall be paid a sum of Kshs.100,000/= on top of his share to cater for his costs. The costs of valuation shall be deducted from the estate. The balance of the estate shall be divided into three equal shares. Each party shall meet their own costs.

Dated and delivered this 4th day of May, 2016.

S.J. CHITEMBWE

JUDGE