



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KAKAMEGA
SUCCESSION CAUSE NO.483 OF 2004
IN THE MATTERS OF THE ESTATE OF PETER ANDAYI OMBOLO.....DECEASED
FELISTER PETER ANDAYI.....PEITITIONER

VERSUS

ROSE SHITAWA

EMMANUEL MAKUYI ANDAYI

PHILIP INGUTIA ANDAYI

MARTHA ONGACHI ANDAYI

ANTONE OKELLO ANDAYI

FELIX ANDATI ANDAYI.....RESPONDENTS

J U D G M E N T

Introduction

1. This cause relates to the estate of Peter Andayi Ombolo who died intestate on 03/11/2000 domiciled in Shinoyi within Kakamega County. The deceased was survived by the following:-

1st House

- Felister Peter Andai – 1st widow who is also the 1st Petitioner and under her is Beatrice Nawire Andrew, the widow of the Petitioner's son by the name Andrew Asmani Andayi. Andrew is also deceased.

2nd House

- Emmanuel Makuyi, an adult son who is married.
- Philip Ingutia – an adult son who is also married.

3rd House

- Martha Ongachi Andayi – 3rd widow - 2nd Petitioner
- Felix Andati – adult son who is married

- Antony Ombolo – son, who is married

The Submissions

2. The Petitioner's proposal on distribution is that the deceased's estate comprising LR No. Butotso/Esumeyia/1663 which measures 13.5 (Thirteen point Five) acres be shared out equally among all the 7 survivors/beneficiaries in order to avoid further equables among the beneficiaries.

3. The Objectors on the other hand propose that the deceased's estate should be shared out equally among the five sons of the deceased without any share going to the female beneficiaries.

4. Both parties seem to agree that the deceased never allocated any of his estate to any of the family members during his lifetime. The Objectors contend that since the daughters of the deceased have not laid any claim to the deceased's estate they should not be given any part of the estate.

The Evidence

5. The Objector's case was supported by the evidence given by Martha Ongachi Andayi who told the Court that the deceased was survived by 3 wives, 6 sons (though one is now deceased) and 8 daughters, Felix Andati Andayi testified as PW2. The two witnesses blamed the Petitioner for allegedly squandering part of the deceased's estate namely, the deceased's shares with Mumias Sugar Company Limited.

6. The 1st Petitioner testified as DW1. She agreed during cross examination that she had not convened any meeting with her surviving co-wife Martha Ongachi Andayi to discuss details of the distribution of the deceased's estate. DW2 was Beatrice Nawire Andrew. She proposed distribution of the estate as follows:-

- 1st house – 4 acres
- 2nd house To share 9.5 acres equally which translates to
- 3rd house 4.75 acres

Analysis and Findings

7. It is not in dispute that the deceased was survived by 3 wives, 5 sons and 8 daughters. One of the sons, Andrew Andayi died, but his wife Beatrice Nawire still survives him. There is also evidence that Andrew Andayi is survived by a son from a different relationship.

8. It appears to the Court that none of the deceased's daughters has an interest in the estate of the deceased. The only dispute in this matter is on distribution. While the Petitioner proposes that the two surviving widows should be counted as independent units for purposes of distribution, the Objectors only want the surviving sons included in the distribution.

9. Having now carefully considered the application and the law, the administrators herein are under a duty to distribute the deceased's estate to those who are entitled to the same. Since the deceased died intestate, the distribution should be done according to the rules of intestacy.

10. Since the parties herein have not agreed on the distribution of the deceased's estate the duty to distribute that estate has shifted from the administrators to this Honourable Court. In carrying out the distribution, this Honourable Court is under a duty to take into account the interests of all the beneficiaries, their circumstances notwithstanding.

11. As noted earlier, the deceased had 5 sons, one of whom is deceased, but still represented by Beatrice Nawire Andrew. The real issue in contention is whether the two Petitioners should get their separate and distinct share of the deceased's estate or whether only the sons should be considered. Of course none of

the daughters has put forth any case either for or against either mode of distribution.

12. It is my considered opinion that distribution of the estate among the five sons of the deceased shall present the least problems in this case. Accordingly, I shall share the 13.5 acres of LP No.Butsotso/Esumeyia/1663 equally among the 5 sons of the deceased as follows:-

1. Andrew Asmani Andayi - 2.7 acres
2. Emmanuel Makuyi Andayi - 2.7 acres
3. Philip Ingutia Andayi - 2.7 acres
4. Antony Okello Andayi - 2.7 acres
5. Felix Andati Andayi - 2.7 acres

The two Petitioners, Felister Peter Andayi and Rose Shitawa Andayi shall each enjoy a life interest in 0.7 acres of the portions of Andrew Asmani Andayi and Felix Andati Andayi respectively.

13. As regards the shares with Mumias Sugar Company, I find that the alleged value of about kshs.8000/= is too little to say that the same should be accounted for by the 1st Petitioner. I take it that what may have been given to the 1st Petition comprises part of the expenses incurred on behalf of the estate of the deceased and nothing much turns on the issue. There shall be no order as to costs in this matter. Right of Appeal 14 days.

Orders accordingly.

Judgment delivered, dated and signed in open Court this 16th day of July 2015.

RUTH N. SITATI

J U D G E

In the presence of:

Appearing and present in person..... for Objectors/Applicants

Mr. Mukabi for Amasakha.....for 1st Petitioner/Respondent

Mr. Lagat.....Court Assistant