



**REPUBLIC OF KENYA.**

**IN THE HIGH COURT OF KENYA AT KITALE.**

**SUCCESSION CAUSE NO. 101 OF 2012.**

**YONA SAMBURMO.....DECEASED.**

**AND**

**CHARLES JUMA SAMBRUMA.....ADMINISTRATOR.**

**R U L I N G.**

The late **Yona Samburmo**, passed away on 4th May, 2011 and on the 22nd May, 2012 his brother, **Charles Juma Samburmo** (herein, the petitioner), petitioned for letters of administration respecting his estate.

In the application, the deceased was said to have left behind two widows i.e. Rose Naliaka and Jenipher Nasimiyu and three children i.e. Everline, Jackline and Amos.

A third widow, Marita Chepti Kambuni, (herein, the applicant) was not mentioned in the application.

The petition was gazetted on 31st May, 2012 and on 11th July, 2012, the applicant filed an objection to the making of grant. The objection is dated 10th July, 2012 and was heard by way of viva-voce evidence from the 6th May, 2014. Prior to that, the applicant filed a cross-petition for grant of letters of administration on the 29th April, 2013. the application is yet to be heard and determined.

Be that as it may, the applicant/objector, **Marita Chepti Kambuni (PW1)**, testified that she was married to the deceased in 1955 and were blessed with two children, both daughters. They lived in Tanzania after the marriage and later re-located to Natwani Moi's Bridge where the deceased owned a parcel of land described as Moi's Bridge Block 7 Natwani measuring about ten (10) acres of which two (2) acres were later sold. The deceased also owned another portion of land known as plot No. 17 Nzoia Sisal Co. Ltd measuring 100x12ft. At the time, the objector was the only wife of the deceased but he later married four other women including Zipporah, Susan (now deceased), Rose and Jennifer. The objector was thus the first wife of the deceased. She said that she was never divorced by the deceased and that she lived in the Natwani farm together with her co-wives Rose and Jennifer. She went on to testify that the petitioner/respondent, her brother-in-law, applied for letters of administration without informing her and in the process concealed vital information. She contended that the petitioner is not entitled to any grant and that the deceased had not distributed his estate prior to his death. She **Henry Mengi Chesirikei (PW2)** disowned the agreement exhibited by the petitioner dated 4th November, 2004 and denied that she ever sold the portion of land known as plot No. 17 Chebarus. She prayed for the grant of letters of administration respecting the estate of the deceased instead of the petitioner.

**Henry Mengi Chesirikei (PW2)**, testified in support of the objector and stated that he was the

secretary of Natwani farm Moi's Bridge and that in the 1970's the deceased purchased ten (10) acres of the farm while his wife, the objector, purchased one (1) acre. However, in the year 2004, the two disagreed thereby prompting the objector to exchange her one (1) acre for another one (1) acre of land situated elsewhere and belonging to a third party. The larger portion of the land belonging to the deceased was thereafter occupied by all of the widows of the deceased.

The witness (PW2) confirmed that the deceased had not separated from the objector prior to his death.

As for the petitioner/respondent, **Charles Juma Samburmo (DW1)**, his testimony was that the deceased was his elder brother and had five wives and several children, all daughters save one son. He (DW1) is the only surviving brother of the deceased and following the death of the deceased the family met and resolved that he (DW1) would take responsibility for the deceased's family. The objector did not attend the meeting but was notified accordingly by the petitioner who went on to state that the family of the deceased lived peacefully at the Natwani Farm until the objector attempted to evict the other widows from the farm. It was then that the petitioner deemed it fit to petition for the grant respecting the estate of his late brother if only to maintain family peace and preserve the estate.

The petitioner admitted that all the widows of the deceased save the objector consented to his application for grant of letters of administration. He is of the view that the estate of the deceased would be wasted if the objector is granted the letters of administration.

**Wycliff Rapando (DW2)**, testified in support of the petitioner and stated that he attended a meeting held on 5th November, 2004 in his capacity as a village elder. The meeting was called by the deceased and was for the sale of a portion of land by the deceased and the objector to one Charles Muteri. He (DW2) witnessed the agreement as recorded by Henry Mengi (PW2), a clerk with Natwani AFC Farm. The land was selling at Ksh. 120,000/= per acre.

This court after considering all the foregoing evidence finds that there is no dispute that the objector is one of the widows of the deceased. She was the first wife among four other wives. There is also no dispute that the petitioner did not involve the objector in his application for grant of letters of administration. He only involved two of the widows (i.e. Rose and Jennifer). He explained that his main reason for petitioning for the grant was for maintenance of peace within the family of the deceased and for preventing the eviction of other surviving widows of the deceased by the objector.

However, there was no proof that the objector had attempted to disrupt the existing peace among family members of the deceased by evicting her co-wives from any of the property belonging to the deceased. Even if there was such an attempt, the order of priority dictated that the widows of the deceased including the objector ought to have petitioned for grant of letters of administration instead of the petitioner.

All or any of the surviving widows could have applied for the grant and none should have consented to the application by the petitioner without the blessing of the others and their adult children.

The petitioner has not shown or demonstrated how the estate would be put to waste should the objector be appointed the sole administrator or one of the administrators.

This objection by the applicant/objector is therefore merited.

Consequently, in the exercise of the powers bestowed upon this court by dint of Rule 73 of the Probate and Administration Rules, it is hereby ordered that the grant of letters of administration respecting the estate of the late Yona Samburmo be issued to the surviving widows of the deceased including the objector, Rose Naliaka and Jennifer or Jenipher Nasimiyu. The petitioner shall be included as a fourth administrator for purposes of overseeing smooth and equitable distribution of the estate among the widows and their respective children (if any). In that regard the application dated 29th April, 2004, by the objector is overtaken by events.

The grant may be confirmed at the instance of all the four administrators after necessary consensus on

distribution prior to the expiry of six (6) months from this date hereof.

Those are the orders of this court.

**[Read and signed this 2nd day of July, 2014.]**

**J.R. KARANJA.**

**JUDGE.**