



**In re Estate of Gerishom Mugeheli Manani (Deceased) (Succession Cause 671 of 2010) [2013] KEHC 3641 (KLR) (9 May 2013) (Ruling)**

*ERICA AZENGA MUGEHERI V MABLE MUSINZI LUMULA*[2013]eKLR

Neutral citation: [2013] KEHC 3641 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KAKAMEGA  
SUCCESSION CAUSE 671 OF 2010  
SJ CHITEMBWE, J**

**MAY 9, 2013**

**IN THE MATTER OF THE ESTATE OF GERISHOM MUGEHELI MANANI DECEASED**

**BETWEEN**

**ERICA AZENGA MUGEHERI ..... PETITIONER**

**AND**

**MABLE MUSINZI LUMULA ..... OBJECTOR**

**RULING**

1. The late Gerishom Mugeheli Manani died on the May 1, 2006. His widow Erica Azenga Mugeheli petitioned this court for letters of administration intestate and was issued with a grant on the November 25, 2010. The grant has not been confirmed. The objector herein filed summons for the revocation of the grant dated April 5, 2011 contending that she is the widow of Kenneth Amugune Manani who is a son to the deceased and the petitioner and that she was not included in the succession cause. The matter proceeded by way of oral evidence. The objector Mable Musinzi Lumula testified that she was married to the late Kenneth Amugune Manani and they were blessed with two daughters namely – Hope aged 15 years and LA aged 13 years. Her husband died in 2002 before the death of his father whose estate is the subject of this cause. Her evidence is that her late husband was a pharmacist at Kakamega Provincial Hospital. He was building a commercial house at plot number Maragoli/Kisatiru/999 at Chavakali Town. The plot was still registered in the names of her father-in-law. The ground floor of the building was complete but the upper floor was not. She started collecting rent from the building. Her deceased husband had also been allocated plot number Maragoli/Kisatiru/824 where he was to put his residential house. The deceased had other children who he allocated properties. According to her the deceased never used to give his children properties free of charge but used to taken a token from them. Her husband died before he could take a token to his father. She denied that she has since remarried. After the death of her husband she went to live with her father-in-law and the



petitioner. The deceased used to support them financially as well as through the provision of food crops from his Soy land. Her husband lost his job before he died. At one time she was invaded by thugs while living at her father-in-law's homestead and she was given another house by her brother in law. She lived there for 8 years but was later chased away. Her first borne daughter is studying at [Particulars withheld] Girls Secondary School , while the second borne was at [Particulars withheld] Girls Primary School. She would like to inherit the share meant for her late husband. The deceased had other commercial buildings at Chavakali market and the other sons collect rent.

2. The objector further testified that she used to live in Kakamega Town with her husband and went to live with her in-laws after his death. They had no matrimonial home at her husband's rural home. When she was chased away a brief case containing all the relevant documents for the construction of their commercial building was taken away. She started collecting the rent from the commercial building since 2000. By that time her husband was still alive. Her husband also used to collect the rent. She was chased away in the year 2010 and reported the matter to Chavakali police station. She denied that it was the petitioner who allowed her to collect the rent.
3. The petitioner testified that she is the widow of the deceased and entitled to petition the court for a grant of letters of administration. Her children allowed her to petition the court and that the estate be registered in her name. She admits that the objector is her daughter-in-law but she is not entitled to anything as her deceased son Kenneth Amugune Manani did not contribute to the acquisition of the estate. The house on plot number Maragoli/Kisatiru/999 was built by her deceased husband. Two fundis namely Tom Limosi and one Javan built the house but they are all deceased. The objector used to collect rent from the building and pass it over to her. She has other developed plots at Chavakali market. There is plot number 1069 at Chavakali market which is developed. There are also other commercial houses within plot number 999 at Chavakali market. The objector left her home in 2010 and got another man by the name Stephen Indasi. The objector used to live with her together with her children and left without informing her. Her late husband gave properties to her other sons but they used to buy from him. The objector's husband was given an opportunity to buy a property from the deceased but he did not. The objector closed the door of the house on plot 999 and the petitioner went to the Vihiga court and obtained orders to open it. She has no problem in having her grandchildren staying with her but they should first respect her.
4. Parties filed written submissions. Counsel for the objector contends that the objector did prove that she was a dependant of the deceased. After the death of her husband she went to live with the deceased and they were taken care of together with her children. Further that the commercial building on plot number 999 belongs to the objector and her deceased husband. Plot number N/Maragoli/Kisatiru/824 was meant for the objector's husband. On his part, counsel for the petitioner contends that the objector is not a beneficiary to the deceased's estate. There is no evidence that her children who are the deceased's granddaughters depended on the deceased. The petitioner is the lawful person who is entitled to obtain a grant. The objector has remarried and there is no evidence that from the death of her husband her father-in-law used to maintain her and her children. The objector has no legal right to litigate in this matter as section 29 of the *Law of Succession Act* does not cover her. Similarly, the grandchildren did not testify and establish that they were indeed the deceased's dependants. According to the law grandchildren have to prove their dependency on the deceased. The issue at hand does not involve the welfare of children but is a succession matter. The petitioner being a grandmother has no parental responsibility over the grandchildren.
5. From the pleadings and evidence on record it is clear that Kenneth Amugune Manani was a son of the deceased. He died in 2002 before the death of his father in 2006. The petitioner got the consent of her



other children and filed this succession cause. The affidavit in support of the petition indicates that the deceased had the following properties:-

Land Parcel No. N/Maragoli/Kisatiru/1211

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Land Parcel No. N/Maragoli/Kisatiru/1069

Land Parcel No. N/Maragoli/Kisatiru/999

Land Parcel No. N/Maragoli/Kisatiru/862

Land Parcel No. N/Maragoli/Kisatiru/841

Land Parcel No. N/Maragoli/Kisatiru/824

Land Parcel No. N/Maragoli/Kisatiru/1251

Land Parcel No. Kakamega/Soy/361

Share Certificate No.ok 06771 – Mudete Tea Factory Ltd.

Share Certificate No.ok 10521 – Chebut Tea Factory Ltd.

6. Share Certificate No.289 – Lunyerere Farmers Co-operative Society Ltd.”
7. It is also established by the evidence of both the objector and the petitioner that after the death of her husband, the objector went to live with the petitioner and her father in-law. According to both parties she lived there until 2010. It is clear from the evidence that all was well for over 8 years until the year 2010. According to the objector she was chased away from the petitioner’s home while the petitioner maintains that she got remarried to another man. It is well established that the widow ranks high in priority to the deceased’s estate and she is entitled to petition the court for the grant of letters of administration. The objector’s contention is that she was left out yet her deceased husband was entitled to a share of the estate. The objector also contends that one of the properties namely Maragoli/Kisatiru/999 belonged to her late husband. According to the petitioner there are other buildings within that plot. The petitioner maintains that the alleged commercial building on plot number 999 belonged to her and her late husband.
8. None of the parties produced documents to show that they initiated the development of the commercial building on plot number 999. It is however established that the objector used to collect rent from the building for quite some time. I do agree with the objector’s evidence that she used to collect the rent since 2000 when her husband was still alive. Although the petitioner contends that she allowed the objector to collect the rent it is not clear why the objector was collecting the rent from that particular building only and not from the other properties. I am satisfied that the commercial building on plot number 999 which is claimed by the objector belongs to Kenneth Amugune Manani. Although the title had not changed I do find that the property belongs to Kenneth Amugune Manani. The non-changing of the title can be attributed to the fact that there are other properties within the same title that are owned by the deceased herein and the petitioner. I do agree with the evidence of the objector that the relevant documents pertaining to the construction of that building were confiscated from her.
9. Counsel for the petitioner maintains that the objector’s children are not the deceased’s dependants. Section 26 of the *Law of Succession Act* defines a dependant to include grandchildren. As stated herein above it is clear that from the year 2002 up to 2006 when the deceased herein died the objector and her children were being taken care of by the deceased. The petitioner admits that she used to live with the



objector and her children. I therefore find that the objector's children are the deceased's dependants. Even if the objector gets remarried that will not disinherit the two grandchildren of the deceased. The two grandchildren are entitled to the share of their deceased father. Since the grant has not been confirmed, the petitioner should ensure that the share of the late Kenneth Amugune Manani goes to the two grandchildren. The objector herein shall hold that share in trust for her children.

10. In the end, I do find that there is no need to nullify the grant issued to the petitioner. All what is required is for the petitioner to take into account the fact that the objector's children were dependants of their late grandfather. I will not make them as a different unit when the estate is being distributed but shall take the share of their late father, that being one unit. I do order that objector herein collects the rent from the commercial building she used to collect rent, that is to say the building standing on plot number Maragoli/Kisatiru/999. The petitioner shall continue collecting rent from the other commercial properties standing on the same plot Maragoli/Kisatiru/999. The parties are family members and each shall bear her own costs.

**DELIVERED, DATED AND SIGNED AT KAKAMEGA THIS 9<sup>TH</sup> DAY OF MAY 2013**

**SAID J. CHITEMBWE**

**J U D G E**

