



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KITALE

SUCCESSION CAUSE NO 12 OF 2017

IN THE MATTER OF THE ESTATE OF THE LATE JOHN JAMIN MUSUNDI - (DECEASED)

BETWEEN

PHILIP MATANDA MUSUNDI.....APPLICANT/PETITIONER

VERSES

STEPHEN FRANCIS MUSUNDI.....1ST RESPONDENT/OBJECTOR

JOEL LUMBASI MUSUNDI.....2ND RESPONDENT/OBJECTOR

JUDGEMENT

1. The deceased herein died on the 21st August, 2016 leaving behind the following beneficiaries.

A .PHILIP MATANDA MUSUNDI

B. STEPHEN FRANCIS MUSUNDI

C. JOYCE SIKHOYA BARASA

D. DAVID BIKETI MUSUNDI

E. DOROTHY LUSIKE MUYERA

F. ESTHER MATINGI WESONGA

G. KOEL LUMBASI MUSUNDI

H. ONESMAS NAKHAMA MUSUNDI

2. They are all adults. The court granted a joint grant to **PHILIP, STEPHEN, JOYCE and DAVID** respectively on **2nd May, 2018** after an objection had been filed by the objectors.

3. The court subsequently granted either of the administrators to file an application for the confirmation of the said grant which was done by Stephen Musundi on the 15th April, 2019. The same is accompanied by a mode of distribution of the estates assets including the fixed as well as moveable assets.

4. Philip Musundi vide a replying affidavit dated 6th June, 2019 has opposed the same and he has given an alternative mode of distribution which to him seems fair and in accord with deceased's wishes.

5. Dorothy Musundi Lisike vide her affidavit sworn on 13th June, 2019 has opposed the mode of distribution by Stephen and states that they need to account for what they have disposed off in the estate especially the trees among others including the proceeds from leasing the land.

6. The parties were then ordered to file written submissions which the court has perused and do not see the need to reproduce the same here. Makali Advocate for the objectors roots for the mode of distribution equally which accords with the provisions of Section 38 of the Succession Act and the provisions of the Constitution which does not discriminate against the beneficiaries whether by gender or otherwise.
7. The Petitioner relied on several authorities which they all seem to draw their base on the now famous case of **RONO VS. RONO (2008) EKLR 803**, in which the court of Appeal clearly set out the question of non-discrimination especially on gender.
8. The Objectors whereas conscious of this position stated that they have not denied that their sisters should not be denied their share in the estate. They have however reduced their entitlement on the ground that they stand to benefit from their matrimonial homes.
9. The question of equal distribution is a dice one and although the constitution as well as the Succession Act has clearly spelt out the parameters, the situation obtaining on the ground sometimes has turned out to be very acrimonious. I state so because despite sometimes "winning" in paper the girls in the estate have found it difficult to enforce the grant. In practical situations the local provincial administrations have been forced to intervene.
10. In essence therefore, although the written law is clear, each case must be handled on its own so as to ensure the compliance with the law as well as balance the parties interest on the ground. I think the application of Alternative Dispute Resolution come into play in this situation and it should be encouraged.
11. The case at hand seems to flow from the same perspective. Though born of the same mother and father, there is a sharp disagreement on how the estate should be shared. As stated above the male beneficiaries except one proposes that they should get a bigger share as their sisters who are already married and they stand to gain from their matrimonial homes. The girls on their part, although they do not deny the above assertion of their marriage insist that the property ought to be shared equally and as per the law provided.
12. The deceased left behind several properties which are not disputed. From the affidavit of Philip Musundi, the deceased seemed not to have desired that the estate be sub divided but a cooperative be formed to oversee its management. There was also an assertion that the said land was shared out between the deceased and other 3rd parties.
13. The above sentiments of not distributing out the estate to individuals but a cooperative be established seemed good but it did not received the consent of all the beneficiaries and at the same time the court has not been provided with any evidence that ,that was their fathers desire.
14. The mode of distribution from the Petitioner seemed to have other 3rd parties who include schools and other public utilities. Again the court has not been furnished with any tangible evidence but it may be true that they exist.
15. The contentious properties however is the **LR No. 5764 ANGLE FARM** measuring **338.37 acres**. The applicants have proposed that the girls be given 14.8 acres and the boys 54.8 acres. The rest of the assets enumerated therein including some parcels, cash crops, machinery as well as shares to be shared equally.
16. Taking the totality of the evidence on board as well as the provisions of the Act and the Constitution, and to ensure peace to prevail in the family, if possible the interest of the three girls must be taken into consideration and as early as possible be isolated. If the said land was to be divided equally among the siblings, then each would get about 40 acres.
17. As sated above there are other 3rd parties who are still interested in the estate and I find that after dealing with the direct beneficiaries herein, they shall also stake their claim on the land. In the premises, and so as not to bring the girls who are as admitted already in their matrimonial homes, I find that each one of them shall be given 20 acres out of the LR No. 5464. The said individual 20 acre shall not be subject to any future deductions be it in form of public utilities, like roads or other easements. They shall not be subject to any deduction should there be any creditor due to the estate. In a nutshell they shall each get their individual single titles as a whole without any subtraction.
18. After removing out the 60 acres due to the 3 girls each of the 5 male beneficiaries, PHILIP, STEPHEN, JOEL, DAVID and ONESMUS shall be entitled to about 55 acres each. Before the said portions are transferred to each one of them, they should ensure that all the 3rd parties claiming the land lawfully are given their portions as well as the public utilities as shall be advised by the relevant government agencies are removed from their portions.
19. The rest of the assets as shall be enumerated below shall be shared out equally between all the beneficiaries. The shares of various companies mentioned below shall be sold and proceeds shared out equally between the beneficiaries.
20. The parties shall have the liberty of varying this mode of distribution on individual or mutual basis as long as they do not interfere with the interest of each other. In other words being a family feud they are at liberty to agree mutually.
21. The sub division when undertaken by the surveyors should as much as possible not interfere with the capital development of the beneficiaries as the court is made to understand that they have settled on the land.

CONCLUSION

22. The deceased estate be shared as follows:

(I). LR NO. 5764 ANGLE FARM MEASURING

338.37 ACRES

- A. PHILIP MATANDA MUSUNDI55 ACRES
- B. STEPHEN FRANCIS MUSUNDI.....55 ACRES
- C. JOEL LUMBASI MUSUNDI.....55 ACRES
- D. DAVID BIKETI MUSUNDI.....55 ACRES
- E. ONESMUS NAKHAIMA MUSUNDI.....55 ACRES
- F. JOYCE SIKHOYA BARASA.....20 ACRES
- G. DOROTHY LUSIKE MUYERA.....20 ACRES
- H. ESTHER MATINGI WESONGA.....20 ACRES

(II) KAPTANAI LAND to be shared equally between the beneficiaries

(III) CHESIKAKI FARM L. R NO. 227 MEASURING 4.5 ACRES to be shared equally between all the beneficiaries.

(IV) NAMUTOKHOLO LAND to go to DOROTHY LUSIKE MUYERA

(V) SIRISIA PLOT to go JOYCE SIKHOYA BARASA

(VI) MOISBRIBGE PLOT to be shared equally between the beneficiaries

(VII) NDIBISI/MUCHI/1649 to be shared equally between the beneficiaries.

(VIII) MALAKISI /NORTH CENTRAL NAMWELA/ 706 to be shared equally beneficiaries

(IX) MALAKISI/ NORTH CENTRAL NAMWELA/707 to be shared equally to between beneficiaries.

(X) MALAKISI /NORTH CENTRAL NAMWELA/922 to be shared equally between beneficiaries

(XI) MACHINERIES to be shared equally between the beneficiaries or be sold and the proceeds to be shared equally in the event of any disagreement.

(XII) The shares as follows to be sold and proceeds to be shared equally: BROOK BOND KENYA LTD, KENYA BREWERIES, ICDC INVESTMENTS, HOUSING FINANCE OF KENYA, NIC BANK, KENYA COMMERCIAL BANK, CO-OPERATIVE BANK LTD, UNILIVER TEA KENYA LTD, EAST AFRICA BREWERIES and other shares to be sold and the proceeds shared equally.

(XIII). The animals (cows) to be shared equally between the beneficiaries.

23. Being a family feud each party shall meet its own costs.

Dated signed and delivered in open court at Kitale this 23rd day of July, 2019.

H K. CHEMITEI

JUDGE

23/7/19

In the presence of:

Makali for the Petitioner

Philip Musundi present

All present

Court Assistant – Kirong

Judgment read in open court.