



NO. 2074

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KAKAMEGA

SUCCESSION CAUSE NO. 48 OF 2011

**IN THE MATTER OF THE ESTATE OF WILSON MAERO NDOMBI alias MAHERO NDOMBI
-----DECEASED**

AND

NANCY AKUMU MAERO PETITIONER

V E R S U S

EDWARD LUMUMBA MAERO OBJECTOR

J U D G M E N T

Introduction

1. **NANCY AKUMU MAERO** the petitioner and second wife to the deceased herein applied for letters of Administration for the Estate of the deceased Wilson Maero Ndombi alias Mahero Ndombi on the 13th of January 2011. The same were issued on the 24th May 2011. On the 8th December 2011 the Objector **EDWARD LUMUMBA MAERO** one of the sons to the deceased Wilson Maero Ndombi alias Mahero Ndombi objected to the said grant and asked this court to revoke the same pursuant to section 76 of the Law of Succession Act Cap 160 (the Act) and Rule 44 of the Probate and Administration Rules. The court in its ruling dated 23rd February 2012 found that the Petitioner did not reveal the other beneficiaries in her petition for grant of letters of administration and that she falsely stated that the deceased was survived by herself only yet there were other beneficiaries. On those grounds the court revoked the said grant issued to the Petitioner on the 24th May 2011 and ordered that a fresh grant be issued to the Objector/Applicant herein **EDWARD LUMUMBA MAERO**. The Court also ordered the Objector/Applicant to file an application for confirmation of the grant within forty five (45) days from the date of the said ruling indicating how the estate shall be distributed. The summons for confirmation was to be served upon all the beneficiaries and he was also to find out what happened to the Mumias Sugar Company Shares.

Summons for Confirmation

2. The objector indeed filed the summons for confirmation of Grant on the 5th of April 2012 as ordered by this court. In the affidavit in support of the summons for confirmation of grant the

Objector/Applicant has named the following as the beneficiaries:

EDWARD LUMUMBA MAERO -SON
JASON NDOMBI -SON
PHILIS NAMUKOBE MAERO -SON (sic)
NANCY AKUMU MAERO -WIDOW

3. He proposes to distribute the estate of the deceased as follows:

Shares of the Mumias Sugar Company to be sold and the proceeds shared equally amongst all the beneficiaries.

L.R No. BUNYALA/NAMBACHA/7 measuring 2.2 Hectares be shared as follows:

EDWARD LUMUMBA MAERO-Two (2) acres
JASON NDOMBI-2.4 acres
PHILIS NAMUKOBE MAERO One(1) acre to be shared jointly with
NANCY AKUMU MAERO

Affidavits

4. By an undated affidavit filed in court on the 27th June 2012 **NANCY AKUMU MAERO** protested to the confirmation of grant. She has stated in her affidavit that the deceased died intestate leaving land parcel No. Bunyala/Nambacha/7 Measuring 2.2 Hectares of which the deceased allocated her 1 and ½ acres. She protests against the allocation of 1 acre to her by the Objector/Applicant and she maintains that she is legally entitled to 1 and ½ acres.
5. **JASON ROBINSON NDOMBI** the other son to the deceased herein and a beneficiary swore an affidavit proposing the mode of distribution of the deceased's estate herein. He has indicated in his affidavit that the following are the sons of the deceased:

JASON ROBINSON NDOMBI
EDWARD LUMUMBA MAERO
TITUS MAERO

6. He states further that his late father's estate comprised the parcels of land known as BUNYALA/NAMBACHA/7 measuring 2.2.Ha and BUNYALA/SIDIKHO/656.He has proposed that the whole of that parcel of land known as BUNYALA/SIDIKHO/656 be given to TITUS MAERO on which parcel of land the said Titus was settled by the deceased. He proposes that the parcel of land known as BUNYALA/NAMBACHA/7 measuring 2.2.Ha be distributed as follows;

EDWARD LUMUMBA MAERO - 1acre

JASON ROBINSON MAERO - 2.5 acres

NANCY AKUMU MAERO - 1 and ½ acres

7. The parties herein were given time to discuss the distribution of the deceased's estate herein with a view to an amicable settlement, but failed to agree. On the 17th November 2011 the case proceeded by oral evidence.

The Objector's Evidence

8. Briefly **PW1 EDWARD LUMUMBA MAERO** testified and told the court that the deceased owned 5.5 acres of land parcel being **BUNYALA/NAMBACHA/7** which he wished to be distributed as suggested in his affidavit. He testified that the portion for Nancy Akumu's house has been given to Phyllis because Nancy Akumu Maero does not live in their home and if she is given the land she might sell it. He confirms that he has not set aside any portion of the 5.5 acres for Nancy Akumu Maero who is his father's Second Wife.
9. On cross-examination by Mr. Munyendo for the petitioner PW1 confirmed that his father had two wives namely **ESNA NASIKE MAERO** (1st wife) and **NANCY AKUMU MAERO** (2nd wife). Nancy Akumu Maero had two children but one died young. He testified that his father owned two parcels of land **BUNYALA/NAMBACHA/7** measuring 2.2.Ha and **BUNYALA/SIDIKHO/656**. His father settled his two wives at **SIDIKHO** their homestead which measured about 2 acres. He added that the parcel of land known as L.R No. **BUNYALA/NAMBACHA/7** measuring 2.2.Ha was bought by her mother before his father married the Petitioner Nancy Akumu Maero. That later the Petitioner was settled on one (1) acre of **BUNYALA/NAMBACHA/7** but he was not certain of the year that happened as he was young. He claimed that the portion the Petitioner was given was clearly identified on the ground though no surveyor had surveyed the said land.

The Petitioner's Evidence

10. **DW1 NANCY AKUMU MAERO** the petitioner testified and told the court that her husband the deceased herein owned two (2) parcels of land and that she had been given the whole of **BUNYALA/NAMBACHA/7** while the first wife was at **SIDIKHO**. She claims to have been given 2 acres by her husband which was objected to by the Objector/Applicant. She further claims that the objector was given one (1) acre of the land while she was given 1.5 acres which are clearly marked on the ground. She is asking the court to give her the 1.5 acres of land. On cross-examination by Mr. Vadanga for the objector she confirmed that she had two children but one died. The other child lives in Uganda. She claimed that the deceased gave her children land and that she planted sugarcane therein.
11. **DW2 JASON MAERO NDOMBI** told the court that he swore an affidavit on the 28/09/2012 and as the eldest son of the home of the deceased he asked for the land of which he got 2.5 acres out of the **BUNYALA/NAMBACHA/7** land though no actual measurements were taken. He claimed that his brother the objector/applicant and his step mother the petitioner herein got about one (1) acre and 1.5 acres respectively though no actual measurements were taken. He claims that the various portions are separated by live fences. When cross-examined by Mr. Vadanga for the objector/applicant DW2 said that no parcel of land on the Nambacha land was set aside for her sister who is in Uganda.

Issues for Determination and Finding

12. The issue for determination before this court is the distribution of the parcel known as **L.R**

BUNYALA/NAMBACHA/7 of the late Wilson Maero Ndombi alias Mahero Ndombi (Deceased). After considering all the evidence on record, including the various proposals for distribution, this court now distributes the said BUNYALA/NAMBACHA/7 as follows:

EDWARD LUMUMBA MAERO - 1 acre

JASON ROBINSON MAERO - 2.5 acres

NANCY AKUMU MAERO - 1 ½ acres to share jointly with her daughter Phyllis Namukobe Maero.

13. Each party shall bear its own costs for these proceedings

14. Orders accordingly.

Delivered, dated and signed in open court at Kakamega this 17th day of December 2014

RUTH N. SITATI

J U D G E

In the presence of

Mr. Anziya (present - for Petitioner

Mr. Onsando (h/b) for Arunga - for Objector

Mr. Murumia - Court Assistant



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