



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MURANG'A

SUCCESSION CAUSE NO. 63 OF 2014

RE ESTATE OF GIITA WAITHAKA (DECEASED)

MUTHONI MWANGI.....ADMINISTRATOR

VERSUS

BENSON MWANGI GITHAЕ.....PROTESTOR

JUDGMENT

1. Giita Waithaka (hereafter *the deceased*) died intestate. His closest surviving relatives are three grandchildren: Muthoni Mwangi (the administrator); Benson Mwangi Githae (the protestor); and, Elias Kamau Gateru.
2. Unfortunately, the trio is squabbling over the distribution of the deceased's sole property known as Loc. 15/Kangure/694 (hereafter *the suit property*).
3. In a synopsis, the administrator proposes to have 3.4 acres and that the protestor and Elias Kamau get 1.5 acres each. Whereas Elias had no objection, the protestor stakes a claim to the whole land on two main grounds: that he single-handedly took care of the deceased who bequeathed him the land; and, that the administrator and Elias have other properties.
4. On 24th September 2018, the court directed that *viva voce* evidence be taken. The administrator and protestor testified in the matter.
5. The protestor (PW1) relied partly on his affidavit of protest dated 2nd November 2021. He said that he lived with the deceased from 1953 and is the one who took care of him. He testified that the administrator did not offer any assistance to the deceased and only appeared at the funeral with a loaf of bread. He claimed that the administrator sold 5 acres of land and that her father has 11 parcels of land. He added that Elias has other land and that it would be unjust to stake a claim to the suit property.
6. The administrator relied on her affidavit in support of the summons for confirmation of grant. She testified that the deceased died during the *Mau Mau* uprising. The date cannot be right. The letter from the chief says he died "*around 1970*". She disputed that the deceased gave the suit property to the protestor. She also claimed that all the three disputants took care of the deceased. When I enquired why she sought a larger share, she answered as follows-

My proposal is that Benson and Elias get 1.5 acres each. I should get 3.4 acres. None of them has helped me with this succession matter. I have spent 200,000. That is why I am claiming more land.
7. I take the following view of the matter. The deceased died before the **Law of Succession Act** came into effect. The disputants are all grandchildren of the deceased. There is no clear cut evidence that he left the suit land exclusively to the protestor. But I also find that the administrator is not entitled to a larger share merely because she financed the filing of this cause.
8. From the evidence, it is the protestor who lived with and took care of the deceased. He is the one entitled to the larger share. Furthermore, both the administrator and Elias Kamau have other property. The administrator did not dispute that she recently sold her 5 acres of land.
9. My final orders are thus as follows-
 - a) That the protestor (Benson Mwangi Githae) shall get 3.4 acres out of Loc. 15/Kangure/694. The administrator (Muthoni Mwangi) and Elias Kamau Gateru shall get 1.5 acres each.
 - b) The grant shall be confirmed in terms of this judgment.

c) Each party shall bear its own costs.

It is so ordered.

DATED, SIGNED AND DELIVERED AT MURANG'A THIS 27TH DAY OF JANUARY 2022.

KANYI KIMONDO

JUDGE

JUDGMENT READ IN OPEN COURT IN THE PRESENCE OF:

ADMINISTRATOR (IN PERSON).

PROTESTOR (IN PERSON).

MS. SUSAN WAIGANJO, COURT ASSISTANT.