



**REPUBLIC OF KENYA**

**IN THE HIGH COURT AT KIAMBU**

**CIVIL APPEAL NO. 163 OF 2016**

**IN THE MATTER OF THE ESTATE OF WAITHERA WILLIE KAIRU *alias* WAITHERA W.O. WILLIE KAIRU (DECEASED)**

**SAMUEL NJOROGE KAIRU.....APPELLANT**

VERSUS

**TIMOTHY KIARIE WILLY.....RESPONDENT**

*(Being an appeal from the judgment and Order of Honourable Resident Magistrate Hon. S.N. Telewa delivered on the 15<sup>th</sup> Day of April 2014 at the CM's Court at Thika in Succession Cause No. 125 of 2010)*

**JUDGMENT**

This appeal concerns the Estate of the late Waithera Willie Kairu *alias* Waithera W.O. Willie Kairu deceased.

The only asset of the deceased and subject of the Succession Cause was **Land Parcel No. Ndarugu/Gathaite/79**.

The Appellant's father's Estate comprised of one land parcel being No. **Ndarugu/Gathaite/384**.

The Appellant sought to inherit his mother's land parcel to the exclusion of his two siblings, including the Respondent herein. The Respondent filed a protest against the grant to the Appellant. Upon hearing of the protest, the trial magistrate held that the land parcel No. Ndarugu/Gathaite/79 should be shared between the petitioner (Appellant) Samuel Njoroge Kairu to take 1.86 acres and Tabitha Wanja Kairu 0.84 acres, to the exclusion of the other four siblings, as the four had inherited their late father's land Parcel No. Ndarugu/Gathaite 384 pursuant to an order of Land Disputes Tribunal ruling dated the 26<sup>th</sup> October 2004.

In the protest proceedings that I have seen, the petitioner/appellant wanted to inherit his mother's property to the exclusion of his sister Tabitha Wanja Kairu.

The Ruling of the court in respect of the protest is the subject of this appeal.

The grounds of appeal are that the trial magistrate erred in in law and fact in holding that the petitioner and his sister should share their mother's estate and by failing to dismiss the Respondent's protest having been filed by a busy body who had no interest in the estate, having inherited his father's estate among other related grounds.

I have considered the parties submissions, and the trial courts judgment. Before proceeding, I must state here that the court proceedings, the judgment of the trial court and the parties submissions in this appeal are so badly prepared and recorded that it is not easy to determine exactly what each of the parties set out to prove to the court. That too applies to the Memorandum of Appeal. The grounds stated therein are a mixed grill and it is a struggle to sift through.

That as it may be and doing the best I can, I have to determine the appeal to the best of my ability.

The main ground is that the deceased's land parcel ought to have been inherited by the appellant alone to the exclusion of his sister Tabitha Wanja Kairu. His only reason was that the said Tabitha did not protest to his application to inherit the land but his brother who had inherited from their deceased's father on her behalf.

In his submissions, the Respondent stated that the appellants claim are baseless as the trial magistrate considered the evidence on record including the Land Disputes Tribunal findings.

The matter of the appellant's siblings were also considered (page 23 Record of Appeal).

The trial court in its judgment rendered that being a beneficiary of the deceased estate, the said Tabitha Wanja was entitled to a share of her mother's estate thus the distribution.

Thus once the protest was allowed by the trial court, it follows that the petitioner's proposed mode of distribution to himself alone was dismissed.

The appellant did not adduce reasons as to why the appellant's sister would be disinherited yet she never benefited from their father's estate with the other siblings.

I therefore find no merit in the appeal. It is dismissed.

The court's holding that the appellant is entitled to 1.86 acres and the sister Tabitha Wanja Kairu 0.84 acres out of the deceased's land **Parcel No. Ndarugu/Gathaite/79** is upheld.

Each party shall bear costs of this appeal.

**Dated and signed at Nakuru this 27<sup>th</sup> Day of March 2019.**

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**J.N. MULWA**

**JUDGE**

**Dated, signed and delivered at Kiambu this 10<sup>th</sup> Day of April 2019.**

.....

**C. MEOLI**

**JUDGE**