



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MURANG'A

SUCCESSION CAUSE NO. 227 OF 2013

RE ESTATE OF UJETHA NYAMBURA WAWERU *alias*

EUJESTA NYAMBURA PARRASIO WAWERU (DECEASED)

ORESTE MARIGA PAKRASIO.....1ST PETITIONER

JOSEPH KAMWARO B. WAWERU.....2ND PETITIONER

VERSUS

HANNAH WAMBUI WAWERU.....PROTESTOR

JUDGMENT

1. Ujetha Nyambura Waweru (hereafter *the deceased*) died *intestate* on 27th April 1999.
2. A dispute has arisen over the *distribution* of her free estate. The only asset seems to be *Loc. 11/Maragi/1193/18*, a plot of land in Mukuyu area (hereafter *the suit property*).
3. I recorded *viva voce* evidence. The following facts are *not* in dispute: That the deceased was the *mother* to the two petitioners; that the protestor, *Hannah Wambui Waweru* is the *co-wife* of the deceased; and, that they were both married to the late *Pakrasio Waweru Kinyoro*.
4. The other uncontested fact is that during the lifetime of their deceased husband, he subdivided the suit property into two *unequal* portions: the petitioners' mother was given the *larger* portion identified as "B". The protestor was gifted the other portion identified as "A". On the original plot are erected dwelling houses or rooms.
5. When the petitioners filed the cause, they described the property as "*Loc. 11/Maragi/1193/18-half share ½*". They did not name the protestor as a beneficiary. To be fair to the petitioners, the protestor had *renounced* her right. She testified that she is illiterate and was misled to do so. When she discovered the erroneous details in the petition, she lodged her protest.
6. The petitioners' gripe as I understood it is that the protestor has erected a fence or boundary wall between the sub-plots A and B thus blocking their tenants from accessing some rooms. They said the wall blocks a corridor.
7. The retort by the protestor is that sub-plot A was formally transferred to her; and, that she has not encroached at all into sub-plot B.
8. I find from the undisputed facts that sub-plot A of the suit property was gifted *inter vivos* and belongs exclusively to the protestor, *Hannah Wambui Waweru*. From the protestor's exhibits 1 and 2, it is clear that an approval for partition and transfer of *each* sub-plot to *each* of the two widows was granted by the local authority. The protestor has been paying rates for her portion to Murang'a County. That position is *confirmed* by the petitioners' own exhibits produced as Defence exhibit (bundle) 1.
9. I thus readily find that sub-plot A does *not* comprise the *free estate* of Ujetha Nyambura Waweru (deceased). Secondly, it is obvious that the suit property is a town plot with dwelling units. The sub-division of such a small plot presents practical difficulties to the existing structures.
10. It *may* be true that the protestor's boundary wall has *blocked* some access for the petitioners' tenants. But I received no clear evidence or survey plans to show the wall has encroached on her co-wife's *sub-plot B*. There is accordingly *no* legal or evidential basis to order her to demolish it.
11. The final orders shall be as follows-

- i) That *Sub-Plot A* of the suit property was gifted *inter vivos* and belongs exclusively to the protestor, Hannah Wambui Waweru.
- ii) That for the avoidance of doubt, *Sub-Plot A* does *not* comprise the *free estate* of Ujetha Nyambura Waweru (deceased).
- iii) That I *decline* to order the boundary wall erected by the protestor to be demolished.
- iv) That the grant shall be confirmed as follows: that *Sub-Plot B* only of *Loc. 11/Maragi/1193/18* shall devolve in *equal* shares to Oreste Mariga Pakrasio, Joseph Kamwaro B. Waweru, Charles Kamau Waweru and Francis Waweru Gakara.
- v) That in the interests of justice, there shall be *no* order on *costs*.

It is so ordered.

DATED, SIGNED and DELIVERED at MURANG'A this 24th day of June 2019.

KANYI KIMONDO

JUDGE

Judgment read in open court in the presence of:

The petitioners (in person).

The protestor (in person).

Ms. Dorcas and Ms. Elizabeth, Court Clerks.