



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NYERI**

**SUCCESSION CAUSE NO. 498 OF 2014**

**IN THE MATTER OF THE ESTATE OF MOSES CIURI GITIKU alias CHIURI GITIKU (DECEASED)**

**JOSEPH WAMBUGU CIURI.....PROTESTOR**

**VERSUS**

**FRANCIS MATHENGE CIURI.....RESPONDENT**

**RULING**

1. The estate relates to the late **MOSES CIURI GITIKU alias CHIURI GITIKU (DECEASED)** who died on the 19<sup>th</sup> July, 1998 at Mary Immaculate Hospital in Nyeri County. The only identifiable parcel of land comprising the estate of the deceased is **Nyeri/Endarasha/55**.

2. The Deceased died intestate and left the following surviving him namely;

- (i) Joseph Wambugu Chiuri – who shall be referred as **‘the protestor’** herein; is the deceased’s son;
- (ii) Mary Thogori Ndirangu –a daughter of the deceased;
- (iii) Francis Mathenge Ciuri – a son to the deceased; and the petitioner herein;
- (iv) Catherine Wangechi Karigi – a daughter of the deceased;
- (v) John Karimi Gichuru – a purchaser;

3. The Grant was issued on the 18/11/2014 and on the 21/08/2015 the Respondent filed a Summons for Confirmation of Grant in which he proposed the distribution of the property comprising the estate of the deceased; his proposal is that the property be registered in his name absolutely; which proposed mode of distribution was opposed by his siblings and they refused to sign Form 38 that is the consent to the confirmation of the grant.

4. The Protestor filed his Affidavit of Protest on the 4<sup>th</sup> October, 2015 against the Summons for Confirmation of Grant and gave his reasons for protesting and included his proposed mode of distribution of the subject property;

5. Directions were taken on the 12/04/ 2017 that the matter be disposed by way of written submissions;

**PROTESTORS CASE**

6. In his submissions the protestor states that the purported purchaser John Karimi Gichuru is a trespasser and is not a beneficiary to the estate of the deceased; nor does he have any claim or interest as the deceased never sold any portion of the subject property to him.

7. The sisters having renounced their interest in the estate of their late father, the protestors proposed mode of distribution was that the suit property be shared equally between him and the respondent;

8. He prayed for the dismissal of the summons for confirmation and the mode of distribution be as he had proposed.

**PETITIONERS CASE**

9. The Grant was issued to the petitioner on the 18/11/2014 and he thereafter filed Summons for Confirmation on the 20/08/2015 and therein proposed the mode of distribution for the suit properties that constituted the estate of the deceased; he had proposed that the whole estate be given to him absolutely; the respondent filed a supplementary affidavit in which he admitted that this proposed mode of distribution solely to himself was erroneous; that the correct position was as set out in his written submissions in which he proposed that the property be divided into two (2) equal proportions and be shared equally between himself and the protestor with each getting 1.4 hectares;

10. That the protestor is not opposed to the above proposed mode of distribution but is only worried that the respondent would dispose of his portion immediately upon confirmation of the Grant; which the respondent submits is not a valid reason for not confirming the grant.

#### **ISSUES FOR DETERMINATION**

11. Upon reading the rival written submissions the only issue framed for determination is the distribution of parcel no. **Nyeri/Endarasha/55**.

#### **ANALYSIS**

12. The protestor may indeed be genuinely worried that the respondent will dispose of his portion as soon as the Grant is confirmed; and indeed there appears to be a ready buyer hovering in the wings just waiting for the Grant to be confirmed so that the deal may be sealed; but this court concurs with the respondents submission that this cannot be a valid ground for protesting and or not having the Grant confirmed;

13. Protests are filed when there is a disagreement as to the mode of distribution as between the beneficiaries; in this instant the sisters have renounced their interest in their late father's estate; and indeed during the court attendances it was abundantly clear to the court that there was no dispute on the mode of distribution; again this court reiterates that anxiety, worrying and being your brother's keeper are not good grounds for protesting.

14. To summarize; there is only one property for distribution; the distribution is as between the protestor and the respondent; and there is no dispute as to the mode of distribution; therefore the parcel no. **Nyeri/Endarasha/55** shall be shared equally between the protestor and the respondent; each party to get 1.4 Hectares;

#### **FINDINGS & DETERMINATION**

15. The protest is found to be lacking in merit and is hereby dismissed.

16. The petitioners mode of distribution of the deceased's estate is found to be fair; the application for confirmation is hereby confirmed as set out in paragraph 14 hereinabove;

17. Each party shall bear their own costs.

It is so ordered accordingly.

**Dated, Signed and Delivered at Nyeri this 22nd day of February, 2018.**

**HON. A. MSHILA**

**JUDGE**