



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NYERI**  
**SUCCESSION CAUSE NO. 539 OF 2009**

**IN THE MATTER OF THE ESTATE OF DAMARIS WANJIKU NDIRANGU-DECEASED**

**ELIZABETH NJAMBI**  
**NDIRANGU.....PETITIONER**

**VERSUS**

**JOSEPH KIMANI**  
**NDIRANGU.....PROTESTOR**

**JUDGEMENT**

**Damaris Wanjiku Ndirangu** (herein after referred to as the deceased) died intestate on 15<sup>th</sup> August 2005 at the prime age of 110 years.

On 17<sup>th</sup> day of June 2009, **Elizabeth Njambi Njuguna**, a daughter to the deceased (herein after referred to as the Petitioner) took out citations and served **Joseph Kimani Ndirangu** who filed an entry of appearance to citation on 10<sup>th</sup> September 2009.

On 16<sup>th</sup> September 2009, the Petitioner herein petitioned for letters of administration intestate to the deceased's estate. The petitioner named the following persons as persons surviving the deceased:-

- i. *Joseph Kimani Ndirangu-----Son.*
- ii. *Enos Njenga Ndirangu-----Son*
- iii. *Hellen Njoki Ndirangu-----Daughter.*
- iv. *Elizabeth Njambi Ndirangu-----Daughter*

Annexed to the citations referred to above is a letter from the local chief dated 13<sup>th</sup> March 2008 naming the same persons as survivors of the deceased.

There is a consent pursuant to Rule 26 (2) of the Probate and Administration Rules shown to have been signed by *Enos Njenga Ndirangu and Hellen Njoki Ndirangu*. The only properties listed in the affidavit in support of the petition are **Nyeri/Naro Moru/1081----3.5 acres** and **Laikipia/Daiga Umande BLK 111/132 ( Muramati)**.

The petition was gazetted on 26<sup>th</sup> day of March 2010 and the grant was issued on 29<sup>th</sup> April 2010 and on 9<sup>th</sup> February 2011 the petitioner herein applied for confirmation of the said grant and proposed that the above properties to be distributed as follows:-

- i. *Laikipia/ Naro Moru /1081 to Elizabeth Njambi Ndirangu absolutely*
- ii. *Laikipia /Daida Umande BLK 111 / 132 (Muramati)- to be shared between Joseph Kimani Ndirangu- 7 acres and Enos Njenga Ndirangi- 7 acres.*

On 4<sup>th</sup> May 2011 **Joseph Kimani Ndirangu** (herein after referred to the protestor) filed an affidavit of protest in which he averred as follows:-

- i. *That he has no objection to the distribution of Laikipia /Daida Umande BLK 111 / 132 (Muramati) as proposed above but he objects to the proposed distribution of Laikipia/ Naro Moru /1081 as proposed above insisting that the said land should be registered in his name absolutely.*
- ii. *That Laikipia/ Naro Moru /1081 is a subdivision of Laikipia/ Naro Moru /247 which he redeemed from the settlement scheme and that the said land is the subject to Nyeri CMCC No. 5 of 2002 between himself and the parties in this case.*
- iii. *That this succession cause should be confined to Laikipia /Daida Umande BLK 111 / 132 (Muramati) which was the only property owned by the deceased.*
- iv. *That no consent was sought from him for the confirmation.*

The protestor filed another affidavit on 7<sup>th</sup> July 2014 in which he stated as follows:-

- i. *That Laikipia /Daida Umande BLK 111 / 132 (Muramati) should not be confirmed as proposed because it does not cater for the following beneficiaries, Hellen Njoki (a deceased daughter), Joyce Wanjiku Ndirangu (a daughter of Mary Wanjiru Ndirangu a deceased daughter) and Cecilia Wanjiku - wife to John Wagura Ndirangu a deceased son).*
- ii. *That he insisted that he paid a debt to Settlement Fund Trustees on behalf of his father, hence his claim to the land.*
- iii. *That the petitioner has intermeddled with the estate in that she has sold some land.*

The petitioner filed an affidavit on 16<sup>th</sup> March 2015 in which she responded to the objectors affidavit as follows:-

- i. *That Laikipia/Naro Moru /1081 and Laikipia/ Naro Moru /1078 were created from Laikipia/ Naro Moru /247, a fact known to the objector.*
- ii. *She denied that the objector paid the alleged sum and that the protestor had actually sued his own mother, the deceased in this estate seeking recovery of Ksh. 17,780/= alleging that he paid the said sum on behalf of his father and attached a copy of the plaint.*

Parties filed written submissions and left it to the court to determine the protest.

The protestors' advocate proposed that *Nyeri/ Naro Moru/1081* goes to the protestor absolutely and *Laikipia/Daiga/Umande Block 111/132 ( Muramati)* be shared among *Elizabeth Njambi Ndirangu, Enos Njenga Ndirangu & Joseph Kimani Ndirangu*. The protestor proposed a second option, that is *the two parcels of land be shared equally among all the above beneficiaries.*

The petitioners' advocates submitted that the petitioner is entitled to sell *Nyeri/Naro Moru/1081* and cited the contents of a letter from the chief dated 13<sup>th</sup> March 2008 which states that the family had agreed to allow the petitioner to have the above property because the deceased's sons had already shared the family land.

It is clear, the parties are not able to agree on the mode of distribution and further, it is not disputed that the deceased died intestate. Further, I find no tangible evidence to support the protestors assertion that he paid the debt thereby redeeming the land in question. In fact from the plaint attached to the affidavit of the petitioner, the protestor had sued his own mother in Civil Case No. 5 of 2002 seeking to recover some money he alleges was loaned to his father. That confirms that there was no agreement that he would get a piece of land in lieu of the alleged sum

Similarly, the petitioner cites a letter from the chief as the basis of her claim for the land. I find the said letter of little evidential value and cannot be used as a basis to warrant this court to grant the land in question to her.

Thus, the deceased having died intestate, her estate falls for distribution as per the provisions of the Law of Succession Act. The starting point is to refer to the relevant applicable law. Section 38 of the Law of Succession Act provides that:-

*"Where an intestate has left a surviving child or children but no spouse, the net intestate estate shall, subject to the provisions of sections 41 and 42, devolve upon the surviving child, if there be only one, or be equally divided among the surviving children"*

In my view, the spirit of Part V of the Law of Succession Act is equal distribution of the estate amongst the beneficiaries of the deceased. My reading of these provisions is that they envisage equal distribution. The word used in Section 35 (5) and 38 is "equally" as opposed to "equitably". This is the plain language of the provisions. The provisions are in mandatory terms-"the property shall.....be equally divided among the surviving children." Equal distribution is envisaged.

Guided by the above sections I order distribution as follows:-

- i. That title number **Nyeri/ Naro Moru /1081** be shared equally among the following **(a) Joseph Kimani Ndirangu, (b) Enos Njenga Ndirangu, (c) Hellen Njoki Ndirangu, (d) Elizabeth Njambi Ndirangu.**
- ii. That title number **Laikipia/ Daiga Umande BLK 111 /132 (Muramati)** be shared equally among the following **(a) Joseph Kimani Ndirangu, (b) Enos Njenga Ndirangu, (c) Hellen Njoki Ndirangu, (d) Elizabeth Njambi Ndirangu.**
- iii. No orders as to costs.

Right of appeal 30 days

**Dated at Nyeri this 29<sup>th</sup> day February of 2016**

**John M. Mativo**

**Judge**

---