



IN THE HIGH COURT OF KENYA AT MURANG'A

SUCC CAUSE NO 135 OF 2012

IN THE MATTER OF THE ESTATE OF

ZIPHORA WAMBUI WAWERU alias SPORAH WAMBUI WAWERU,

DECEASED

ISAAC KAMANDE GITUNDU..... ADMINISTRATOR

VERSUS

JANE NYAMBURA WAWERU..... PROTESTOR

J U D G M E N T

1. The Deceased herein died on 06/01/2005. She was survived by an only son (Isaac Kamande Gitundu, the Administrator of her estate by a grant issued to him on 07/10/2013) and 5 sisters (including Jane Nyambura Waweru, the Protestor herein). The estate of the Deceased comprises two parcels of land – **L.R. Loc. 17/Iganjo/3433** (measuring 0.382 Ha. or 0.94354 acres) and **L.R. Gilgil/Karunga Block 1/789** (0.405 Ha. or 1.0 acres).

2. In his summons for confirmation of grant dated 10/04/2014 the Administrator proposed that he alone should inherit parcel L.R. Loc. 17/Iganjo/3433 while his sisters share equally L.R. Gilgil/Karunga/Block 1/789. The Protestor objected to this proposed distribution by her affidavit of protest sworn and filed on 08/07/2014. She counter-proposed that the two parcels of land should be shared equally between the 6 children of the Deceased.

3. In accordance with directions of the court given on 4/12/2015, the protested summons for confirmation of grant was to be disposed of by way of oral evidence. The court took such evidence on 11/05/2015. The Administrator testified and was cross-examined by the Protestor. He did not call any other witness. The Protestor also testified and called her 4 sisters as witnesses. None of them were cross-examined by the Administrator. The 4 sisters were **Alice Wanjiku Waweru, Margaret Njeri Waweru, Mary Muthoni Waweru** and **Elizabeth Wanjiru Waweru**.

4. In the course of his testimony the Administrator produced in evidence the written wishes of the Deceased regarding her estate (**Exhibit 1**). That document was acknowledged by the Protestor who in fact had the original thereof, and which she handed over to the Administrator to produce in evidence. The Deceased's instructions included a bequeath of 0.4 acres from L.R. Loc. 17/Iganjo/3433 to the Protestor's son called **Ben Waweru** (who subsequently died in 2012 aged about 30 years without spouse or issue). It is because of his death that the Administrator claimed to be entitled to the entire parcel of land. In cross-examination by the Protestor, the Administrator acknowledged that the Deceased had given him *inter vivos* some two acres of land which he subsequently sold.

5. The case of the Protestor was that the 0.4 acres that should have gone to her now deceased son should come to her as she has other sons to whom she can give the land. She was supported in this by her 4 sisters. She is also on the right side of the law: her son Ben Waweru having died without spouse or issue, his mother is the legal beneficiary of this estate; and there cannot be any doubt that his estate is entitled to the 0.4 acres bequeathed to him by his grandmother.

6. At the end of the Protestors case the Administrator addressed the court as follows –

“I now wish to state that I will comply fully with my mother’s (Deceased’s) wishes as contained in Exhibit P1. The Protestor (Jane) should get the 0.4 acres that should have gone to her son Ben had he not died”.

7. In the event I will confirm the grant issued to the Administrator on 15/10/2013 and direct that the estate of the Deceased shall be distributed as follows –

LR Loc 17/Iganjo/3433:

Administrator Isaac Kamande Gitundu to get 0.5 acres

Protestor Jane Nyambura Waweru to get 0.4 acres

LR Gilgil/Karunga/Block 1/789:

This parcel of land shall be shared equally by the 5 sisters Jane Nyambura Waweru, Alice Wanjiku Waweru, Margaret Njeri Waweru, Mary Muthoni Waweru and Elizabeth Wanjiru Waweru.

Those will be the orders of the court. Parties shall bear their own costs of these proceedings.

DATED, SIGNED AND PRONOUNCED IN OPEN COURT AT MURANG’A THIS 19TH DAY OF JUNE 2015

H P G WAWERU

JUDGE