



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KERUGOYA

SUCCESSION CAUSE NO. 92 OF 2014

IN THE MATTER OF THE ESTATE OF NYAGA GICHARU (DECEASED)

LUCY WAMBERE RICHARD.....PETITIONER

AND

CYPRIAN KARUKU MUKONO.....PROTESTOR

JUDGMENT

1. This cause relates to the estate of the late **NYAGA GICHARU**, the deceased herein. **Lucy Wambere Richard**, one of the daughters petitioned for letters of administration to the said estate and was appointed the administratrix of the estate by this Court on 23rd September, 2014.

2. The deceased in this cause died leaving behind 3 children surviving him named in the petition as:

(i) Lucy Wambere Richard (the petitioner and administratrix)

(ii) Cecilia Muthoni Njiru

(iii) Cyprian Karuku Mukono

The estate in this cause comprises that property known as **L.R. No. NGARIAMA/MERICHI/151** measuring approximately 10.20 acres as per certificate of search filed together with the petition for letters of administration herein.

3. The petitioner/administratrix vide summons for confirmation of grant dated 15th October, 2014 applied to have the grant issued to her confirmed and proposed that the estate of the deceased comprised in **NGARIAMA/MERICHI/151** be distributed equally among the 3 of them being the only beneficiaries to the estate. Cecilia Muthoni, one of the beneficiaries agreed with the administratrix but Cyprian Karuku Mukono, the only male child to the deceased disagreed and filed a protest.

4. In his protest, Cyprian Karuku Mukono reasoned that being the only son he was left with the land parcel forming the estate after the sisters got married. He alleged in his affidavit of protest that he has developed the estate. He proposed that the estate be distributed as follows:

(a) Cyprian Karuku Mukono - 8.20 acres

(b) Lucy Wambere Richard - 1 acre

(c) Cecilia Muthoni Njiru - 1 acre

He further argued that the sisters should get less because they are married and have their own properties where they are married and that if the estate is distributed equally among the three beneficiaries as suggested by the petitioner, he would be prejudiced as he has five sons who depend on the land forming the estate where he claimed to have even put up houses for them.

5. I have considered the petitioner's proposed mode as contained in the affidavit in support of the Summons for Confirmation of Grant and the written submissions. I have also considered the protest by Cyprian Karuku Mukono the protestor in this cause. The issue for determination is fairly simple. The beneficiaries recognize one another and the only issue for determination is which mode of distribution is lawful and fair.

6. The deceased in this cause died on 9th February, 1996 and so the law applicable in administration of the estate as per **Section 2** of the **Law of Succession Act Cap. 160** is not the customary law/practice but the provisions of the **Law of Succession Act. Sections 35 and 38** of the said Act clearly provide that the estate of a deceased person shall be divided equally among the surviving children.

7. The protestor's view on how the property forming the estate should be distributed is not only contrary to the law but is unconstitutional as submitted by the petitioner's counsel Mr. Ngigi Gichoya Advocate. The same is untenable because **Article 27** of the Constitution outlaws discrimination on account of sex or gender. It is important to note that the law does not discriminate against daughters whether married or not neither does it favour sons. All children are treated equal in law because they are indeed equal. Daughters are entitled to inherit equal shares of their father's estate just like the sons.

8. The thinking expressed by the protestor that he should be treated favourably and be given a lion's share of the estate represent past customary practices in Kenya that has no place in the modern era characterized by new constitutional order. It is unlawful and repugnant and should be discouraged and discarded. In view of the foregoing and going by the law, the estate in this cause comprised in that property known as **Ngariama/Merichi/151** shall be distributed equally among the three (3) beneficiaries to wit:

(1) Lucy Wambere Richard

(2) Cecilia Muthoni Njiru

(3) Cyprian Karuku Mukono

The grant issued on 23rd September, 2014 is hereby confirmed as per the above distribution.

In order to bring this matter to an end, the District Surveyor is directed to visit the property forming the estate and carry out the subdivision as per the confirmed grant and place beacons to mark out the boundaries accordingly. The surveyor's fees shall be paid by the three beneficiaries equally and the local administration (office of the District Officer and the area chief) shall provide security for the exercise. The District Land Registrar can dispense with production of identity card or PIN of any of the beneficiaries who may be reluctant to cooperate and the Deputy Registrar or the court's Executive Officer is directed to execute requisite documents on behalf of any beneficiary who may be reluctant to cooperate to facilitate transmission of the estate to the beneficiaries. Each party shall pay own costs. It is so ordered.

Dated and delivered at Kerugoya this 28th day of September, 2015.

R. K. LIMO

JUDGE

28.9.2015

Before Hon. Justice R. Limo

Court Assistant Willy Mwangi

Mwangi for Petitioner present

Lucy Wambere Richard present

Cecilia Muthoni present

COURT: Judgment dated, signed and delivered in the open court in presence of Mwangi for Petitioner and protestors in person.

R. K. LIMO

JUDGE

28.9.2015