



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KERUGOYA

SUCCESSION CAUSE NO. 246 OF 2013

IN THE MATTER OF THE ESTATE OF WANJIRA MWANIKI MAGONDU (DECEASED)

AND

SHADRACK KINYUA MWANIKI MAGONDU.....PETITIONER

VERSUS

JOHN MWANGI KINYUA.....1ST PROTESTOR

ROSE WAGICHUGU KINYUA.....2ND PROTESTOR

JUDGMENT

1. The cause herein relates to the estate of the late **WANJIRA MWANIKI MAGONDU** (deceased) who died intestate on 18th day of April, 1992 domiciled in Gathambi, Kirinyaga County. The deceased left behind **SHADRACK KINYUA MWANGI MAGONDU** as the only child and was appointed the administrator of the estate herein and granted grant of letters of administration on 14th February, 2014.
2. The administrator vide summons dated 14th August, 2014 applied for confirmation of grant proposing to share jointly the only property forming the estate herein namely **MWERUA/MUKURE/857** with GRACE KANINI MWANIKI his second wife.
3. John Mwangi Kinyua, son to the administrator and grandchild of the deceased and his mother, ROSE WAGICHUGU KINYUA and first wife to the administrator protested to the mode of distribution proposed by the administrator and filed an affidavit of protest proposing that the estate of Wanjira Mwaniki Magondu be distributed equally among all the grandchildren of the deceased or the children of the administrator and the first wife of the petitioner excluding the second wife.
4. The protest was canvassed by way of *viva voce* evidence and John Mwangi Kinyua or (1st protestor) told this Court that he did not trust his father, the administrator herein, as he suspected that he may dispose of the property forming the estate accusing him of living with his second wife and never bothering to visit the first wife and his children. He proposed that to ensure that their interests are catered for the estate should be distributed equally among all the grandchildren of the deceased or the petitioner's children.
5. The petitioner/administrator on the other hand supported his proposed mode arguing that he is the only child to the deceased herein and that the protestors being his son and first wife respectively had no basis to protest as the estate belonged to his mother and his children had nothing to do with it. He criticized his children for being disrespectful and chasing him out of his mother's estate. He further argued that he had a right to choose his second wife to share in the estate as his first wife was staying on his other separate property which he said solely belongs to him.
6. I have considered the proposed mode of distribution by the petitioner and the basis for the protest

- by both the 1st protestor and the 2nd protestor. The main issue for determination in this cause is whether a grandchild to a deceased person can stake claim on an estate of a deceased person against the interest of his/her father and whether the spouse of a petitioner can also stake claim on account of the relationship to the petitioner or administrator.
7. There is no doubt that the law provides under **Section 66** of the **Law of Succession Act** and **Rule 7 (1) (e) (iii)** that a child has priority over grandchildren in both administration and distribution of the estate of a parent's estate. The protestors herein have not claimed that their late grandmother took care of them as her own children immediately prior to her death. The Petitioner told this Court that he brought up the protestors in his own farm and took care of them as his children.
 8. This Court finds that the protest filed herein lacks basis in law and is without merit. The Petitioner is the father of the 1st protestor and husband to the 2nd protestor. The law gives him priority over them since their connection to the estate is attributed to their relationship to the administrator. A spouse cannot ordinarily claim an equal right with a person who is directly related with the deceased person. Her/his right can only accrue from the rights of a direct beneficiary of an estate of a deceased person. The 2nd protestor cannot claim a share of the estate herein just because she is the daughter in law to the deceased. The presence of her husband herein negates any such claims. Both protestors can only claim rights over the property forming the estate through the administrator herein.
 9. On the question of the mode of distribution of the estate herein, the provisions of **Section 38** of the **Law of Succession Act** provides that where a deceased is survived by only one child, then the estate shall devolve upon the child. The Petitioner has chosen his second wife as the person who he wishes to share the estate with and he has a right to share his own property with anyone including any member of his family but this is only after the property has transmitted to him. For now the law provides that the estate can only go to him. What he does after that is really upto him. He told this court that he has noble plans for both his wives and children including the protestors herein which is commendable but again as I have said is really not an issue in this Court for now.
 10. In sum, the protest filed herein is dismissed for reasons aforesaid. The grant issued on 18th February, 2014 to the administrator herein SHADRACK KINYUA MWANIKI MAGONDU is hereby confirmed and the property forming the estate known as **MWERUA/MUKURE/857** shall devolve upon him as the sole child to the deceased herein WANJIRA MWANIKI MAGONDU. I will not make any order as to costs so each party shall meet his/her own costs. It is so ordered.

Dated and delivered at Kerugoya this 29th day of October, 2015.

R. K. LIMO

JUDGE

29.10.2015

Before Hon. Justice R. Limo

Court Assistant Willy Mwangi

Shadrack Kinyua present

John Mwangi 1st protestor present

Rose Wagichugu 2nd protestor present

COURT: Judgment signed, dated and delivered in the presence of petitioner in person and the 1st protestor and 2nd protestor also appearing in person.

R. K. LIMO

JUDGE

29.10.2015