



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYERI

SUCCESSION CASE NO. 236 OF 2001

IN THE MATTER OF THE ESTATE OF

ZACHARY KINYUNGU MACHARIA..... DECEASED

AND

MARY NYAWIRA MACHARIAPETITIONER

versus

MARY THOGORI GITONGA & OTHERS.....PROTESTORS

JUDGMENT

BACKGROUND

1. CHRISTOPHER MACHARIA and ESTHER NYOKABI MACHARIA applied for grant of letters of administration of the estate of ZACHARIA KINYUNGU GITHII alias KINYUNGU S/O GITHII and named the following survivors.
 1. CHRISTOPHER MACHARIA - SON
 2. PETER GITHAIGA GITONGA - SON
 3. JOSEPH GITONGA MACHARIA - SON
 4. MARY NYAWIRA MACHARIA - DAUGHTER
 5. ESTHER NYOKABI MACHARIA - WIDOW
2. The said grant was issued on 5th October 2005 and on 20th September 2010 MARY NYAWIRA MACHARIA made an application for revocation or annulment of the confirmed grant on the ground of the death of the two administrators herein which application was allowed and grant issued on 5th November 2010.
3. On 13th June 2011 the petitioner MARY NYAWIRA MACHARIA applied for confirmation of the grant and proposed the mode of distribution of L.R. THINGI /KARIA/515 as follows:
 1. MARY NYAWIRA MACHARIA - 0.6
 2. PERIS MUMBI GITONGA - 0.6

- | | | |
|---------------------------|---|-----|
| 3. MIRIAM WAMUCII MWANGI | - | 0.2 |
| 4. MARY THOGORI GITONGA | - | 1.4 |
| 5. PETER GITHAIGA GITONGA | - | 0.5 |
4. On 27th February 2012 the protestors herein filed an affidavit of protest sworn by MARY THOGORI GITONGA on the basis that some other beneficiaries were not included and named the beneficiaries and proposed distribution thus:
- | | | |
|----------------------------|---|-------|
| 1. MARY NYAWIRA MACHARIA | - | 0.366 |
| 2. PERIS MUMBI GITONGA | - | 0.623 |
| 3. GRACE NYAMBURA WACHIRA | - | 0.257 |
| 4. MARY THOGORI GITONGA | - | 0.311 |
| 5. ZAKARY MACHARIA GITONGA | - | 0.311 |
| 6. JOSEPH GICHUKI GITONGA | - | 0.311 |
| 7. PETER GITHAIGA GITONGA | - | 0.568 |
5. Directions were given that the protest be heard by way of affidavit evidence and written submissions.

SUBMISSIONS

PETITIONER

6. It was submitted that the deceased was survived by the following:

1ST HOUSE

1. MARY NYAWIRA MACHARIA
2. PERIS MUMBI GUANDARU
(wife JOSEPH GITONGA MACHARIA)
3. MIRIAM WAMUCII MWANGI

2ND HOUSE

1. MARY THOGORI GITONGA

3RD HOUSE

PETER GITHAIGA and that as per her proposal mode of distribution each house gets 1.4 acres and 0.5 goes to PETER GITHAIGA.

7. In respect of the 1st house the petitioner further submitted that their 1.4 be shared as follows:

- | | | |
|--------------------------|---|-----|
| 1. MARY NYAWIRA MACHARIA | - | 0.6 |
|--------------------------|---|-----|

2. PERIS MUMBI GUADARU - 0.6
3. PETER GITHAIGA - 0.5
4. MIRIAM WAMUCII MWANGI - 0.25

while the 2nd house gets 1.4.

8. On behalf of the protestors further affidavit was filed wherein it was proposed that the 1.4 acres given to their house be shared as follows:

1. MARY THOGORI GITONGA - 0.35
2. ZACHARY MACHARIA GITONGA - 0.36
3. MARTIN WAMBUGU GITONGA - 0.35
4. JOSEPH GICHUKI GITONGA - 0.35

and that the 1.4 given to the house of the protestor be shared as follows:

1. PERIS MUMBI GITONGA - 0.7
2. MARY NYAWIRA MACHARIA - 0.35
3. MIRIAM WAMUCII MACHARIA - 0.35
- with PETER GITHAIGA GITONGA - 0.568

9. The only issue for determination in this matter as I can identify from the affidavit and written submissions is whether the petitioner MARY NYAWIRA MACHARIA and her sister MIRIAM WAMUCII are entitled to equal shares.

10. It is the petitioners submissions that since MIRIAM WAMUCII had been married she is only entitled to 0.2 acres but without offering any reason for the proposed mode of distribution.

11. It should be noted that all the children of the deceased rank equal in distribution and since the deceased had not made any advancement to any of them I therefore find no justification for awarding the petitioner a bigger portion of the land than her sister MIRIAM WAMUCII MWANGI. I further find that there is no bar to this 1st house in agreeing to sub divide the land between MARY GITONGA and her children though this may deny government revenue at this stage.

12. I would therefore allow the protest herein and confirm the grant herein as follows:

1st HOUSE

1. PERIS MUMBI GUANDARU - 0.6 acres
2. PETER GITHAIGA GITONGA - 0.5 acres
3. MARY NYAWIRA MACHARIA - 0.4 acres
4. MIRIAM WAMUCII MWANGI - 0.4 acres

2nd HOUSE

1. MARY THOGORI GITONGA - 0.35 acres

2. ZACHARY MACHARIA GITONGA - 0.35 acres

3. MARTIN WAMBUGU GITONGA - 0.35 acres

4. JOSEPH GICHUKI GITONGA - 0.35 acres

13. This being a family dispute each party shall bear their own cost.

Dated signed and delivered at Nyeri this 28th March 2014.

J. WAKIAGA

JUDGE

Petitioner in person.

No appearance by Mr. Kimunya

protestor present.

Court: Judgment read in open court in the presence of the petitioner and the protestor but in the absence of Mr. Kimunya advocate.

J. WAKIAGA

JUDGE