



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT EMBU

SUCCESSION CAUSE NO. 174 OF 2011

IN THE MATTER OF ESTATE OF CHIRIGU KANGERUE

ALIAS CIRIGU KANGERUE (DECEASED)

BETWEEN

IRERI CIRIGU PETITIONER

AND

CATERINA CIRIGU PROTESTOR

R U L I N G

1. The deceased, Cirigu Kangerue, died on 21st March 1969. He left behind three children; John Nthiga Chirigu (deceased), Caterina Cirigu and Ileri Cirigu. Ileri Cirigu is the administrator of the Estate.
2. The deceased also left behind two properties; NGANDORI/NGOVIO/93 and NGANDORI/KIBUGU/T.213 which are the subject of the summons for confirmation of grant dated 29th January 2012 in which the administrator proposes that they be distributed as follows;

NGANDORI/NGOVIO/93 to be shared between Caterina Cirigu – 0.18 acres, Ileri Chirigu – 0.30 acres and John Nthiga Cirigu – 0.40 acres.

NGANDORI/KIBUGU/T.213 to go to Moses Makumi Kithinji wholly.

3. Caterina Cirigu filed an affidavit of protest sworn on 23rd October 2013 in which she opposed the proposed distribution on the ground that Moses Makumi Kithinji was unknown to the estate and that Ileri Cirigu had refused to disclose his business with the estate. Consequently she proposed that NGANDORI/NGUVIO/93 be given to Samuel Nyaga who is the son of John Nthiga absolutely as she was giving him her share while Ileri remains with NGANDORI/KIBUGU/T.213.
4. Ileri testified that he had entered into a sale agreement with Moses Kithinji to finance the filing of the application of the grant of letters of administration. He stated that he had in fact received Kshs. 25,000/= in total. He did not provide any written agreement or evidence to that effect.
5. Caterina denied that there was any agreement to dispose of the property. She testified that she was willing to give up her share to the children of her deceased brother. She deposed that the two

pieces are fairly and are of equal value as one of them is in a township.

6. I have considered the evidence and in reaching my decision, I am guided by the ***Law of Succession Act (Chapter 160 of the Laws of Kenya)***, which holds that the property of the deceased devolves upon all the children equally. In this instance, each of the deceased children shall be entitled to a share of the properties. In my view the distribution proposed by the protestor is fair in the circumstances.
7. I have heard what Ileri has stated but I cannot grant the said Moses Makumi Kithinji part of the estate as he is not a beneficiary. Any agreement was made without the knowledge of the beneficiaries or sanction of the court. Ileri will take the property he purportedly sold and deal with the purchaser himself. He cannot take the benefit of the property and insist of sharing the other remaining property to the detriment of the other beneficiaries.
8. As Caterina is entitled to a share, she is entitled to gift it to her nephew, Samwel Nyaga. The deceased brother is survived by a widow and children hence the share should devolve to them.
9. I therefore make the following orders;
 - a. NGANDORI/KIBUGU/T.213 shall devolve to Ileri Cirigu absolutely.
 - b. NGANDORI/NGOVIO/93 shall devolve as follows;
 - i. One half share thereof to Samuel Nyaga absolutely.
 - ii. On half share to RUTH MIRIU JOHN to hold in trust for the children of JOHN NTHIGA CHIRIGU.
 - c. There shall be no order as to costs.

DATED AND DELIVERED AT EMBU THIS 23RD DAY OF APRIL 2014.

D.S. MAJANJA

J U D G E

Ileri Cirigu, applicant, in person.

Mr Njage, instructed by Morris Njage and Company Advocates for the respondent.