



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NYERI
SUCCESSION CASE NO. 1035 OF 2009
IN THE MATTER OF THE ESTATE OF
CHARLES GAKURE *alias* GAKURE S/O MUCHEKE..... DECEASED
AND
SAMUEL WAIRAGU MAINA
REBECCA WAMBUI WAIRAGUPETITIONER

RULING

1. SAMUEL WAIRAGU MAINA petitioned this court for grant of letters of administration in respect of the estate of CHARLES GAKURE *alias* GAKURE S/O MUCHEKE and named the following:
 - a. SAMUEL WAIRAGU MAINA - Son
 - b. HANNAH WANJIRU WAGATE - married daughter
 - c. RUTH WATHIMA NDUMIA - married daughter
2. The petitioner named the following assets
 - a. L.R. NO. THEGENGE/GATHUTHI/605
 - b. LR. NO. THEGENGE/GATHUTHI/36
3. On 27th October 2010 letters of administration was issued to the said SAMUEL WAIRAGU MAINA and on 9th May 2011 REBECCA WAMBUI WAIRAGU filed an application for revocation of the grant and was on 10th May 2011 issued with letters of administration.
4. On 11th November 2011 REBECCA WAMBUI WAIRAGU filed summons for confirmation of the grant and proposed mode of distribution as follows:
 - i. L.R. NO. THEGENGE/GATHUTHI/605
 - a. JOSEPH MACHARIA GITAHI - 1½ acres
 - b. REBECCA WAMBUI WAIRAGU - remaining portion
 - ii . LR. NO. THEGENGE/GATHUTHI/36

a. REBECCA WAMBUI WAIRAGU - absolutely

5. On 13th March 2012 HANNAH WANJIRU WAGETE and RUTH WATHIMA NDUMIA filed an affidavit of protest in which they deponed that JOSEPH MACHARIA GITAHU the interested party was a stranger to the estate. They further deponed that the deceased had in his lifetime indicated that upon his death his property should be registered in the names of his surviving children jointly in equal shares.

The protestors therefore proposed that distribution as follows:

a. L.R. NO. THEGENGE/GATHUTHI/605

- a. REBECCA WAMBUI WAIRAGU jointly in equal shares
- b. HANNAH WANJIRU WAGETE
- c. RUTH WATHIMA NDUMIA

LR. NO. THEGENGE/GATHUTHI/36

- a. REBECCA WAMBUI WAIRAGU jointly in equal shares
- b. HANNAH WANJIRU WAGETE
- c. RUTH WATHIMA NDUMIA

7. In a further affidavit of protest filed on 12th March 2012 the protestors further agreed that they had established that the interested party entered into a mutual sale agreement with their late brother SAMUEL WAIRAGU MAINA together with the wife of the petitioner. They therefore proposed that THEGENGE/GATHUTHI/605 be subdivided as follows:

- a. JOSEPH MACHARIA GITAHU - 1½ acres
- b. REBECCA WAMBUI WAIRAGU - 0.167 acres
- c. HANNAH WANJIRU WAGETE - 0.667 acres
- d. RUTH WATHIMA NDUMIA - 0.667 acres

THEGENGE/GATHUTHI/36

- a. REBECCA WAMBUI WAIRAGU - 0.33 acres
- b. HANNAH WANJIRU WAGETE - 0.33 acres
- c. RUTH WATHIMA NDUMIA 0.33 acres

8. The parties herein by consent agreed that the protest be heard by way of written submissions and affidavit evidence and the protestors filed their submission on 21st November 2013 in which they submitted that in the interest of justice the purchaser should not be deprived of his right of share of what he had purchased and developed.

9. The Petitioner on 26th November 2013 filed written submissions in which she submitted that the interested party was a liability to the estate having bought 1½ acres partly to offset a loan with Taifa Sacco Society. She submitted that since the protestors were married they are not entitled to inherit as per the Agikuyu customary law which is applicable since the deceased died in the year 1970 before the succession Act. She further submitted that the protestors have not been in occupation.

10. From the submissions herein and the affidavit evidence it is clear that the interested party bought the land from SAMUEL WAIRAGU GAKURI deceased before the grant of letters of administration and therefore the same did not have capacity to dispose of the same. It is also clear that the interested party's right was not a liability against the estate of the deceased but against the interests of the petitioner's late husband.

11. I must further point out that in view of the submissions by the petitioner this was a matter that should have been determined by way of oral evidence as had been directed by the court on 20th July 2012. It was upon the Petitioner to establish the existence of the alleged Agikuyu customary law but I must point out that all the children of the deceased male or female, married or unmarried rank equal in respect to the distribution of the property and therefore find no merit on the submissions by the petitioner.

12. Taking into account the fact that the protestors have admitted that the interested party is entitled to the portion which he had illegally purchased I would therefore allow the objection herein and order that distribution herein be as per the affidavit of protest filed on 22nd March 2012.

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

Dated, signed and delivered at Nyeri this 30th day of May 2014.

J.WAKIAGA

JUDGE

Court: Judgment read in open court in the absence of the parties.

J.WAKIAGA

JUDGE

30/5/2014