



REPUBLIC OF KENYA

High Court at Nyeri

Succession Cause 248 of 1998

GICHUKI MBOGO MUNAHU..... DECEASED

AND

MACCOM MATHENGE & 5 OTHERS.....PETITIONERS

VERSUS

ESTHER WAIRIMU GICHUHI & 5 OTHERS.....OBJECTORS

JUDGMENT

1. MACCOM MATHENGE MBOGO petition for a the grant of letters of the administration of estate of GICHUKI MBOGO and named the following as surviving him.

- a. MACCOM MATHENGE MBOGO - Step brother
- b. NDUNGU MBOGO MWANGI - Step brother
- c. JAMES MUTHIMA MWAI - Step brother
- d. SAMUEL KABARI MBOGO - Step brother
- e. CHARLES MURAGE MBOGO - Step brother
- f. ESTHER WANGECHI MBOGO - Step Sister.

2. On 27th September 2010 JUDY WANGARI NDONGA filed an application for revocation or annulment of grant on the ground that the proceedings to obtain the grant were defective substance and nature and that the grant was obtained fraudulently by making a false statement or by concealment from court of material facts to the case.

3. It was supported by her affidavit in which she deponed that the petitioner and the beneficiaries listed are step brothers of the deceased and their mother is Mrs. Wambui Mbogo and that there are other beneficiaries who were left out intentionally by the petitioner.

4. She further stated that she lives in the land known as MWEIGA/GAKANGA/138 together with TERESA NJERU MURUNGARI and have built permanent houses thereat and that the heirs to the estate of the deceased should be the sons and daughters of Charity Gathoni Mbogo, Milka Nyakibui Mbogo who are sisters to the deceased.

5. The application was opposed by the petitioner through a replying affidavit in which he deponed that there was nothing wrong in him applying for grant of the estate of his step brother and that the protester was aware of the filing of the case and that a niece will not rank ahead of brothers and sisters.
6. There is a further affidavit sworn by TERESA NJERI KARUNGARI in which she controverted the allegation by the protester.
7. Directions were given on 19th November 2010 that the application be served upon all the respondents name and from the said date I am unable to get the status of this application.
8. On 23rd November 2011 ESTHER WAIRIMU GICHUHI & 4 OTHERS filed an application for revocation of grant on the basis that they were excluded from the estate and that their shares within the estate have not been ascertained and determined.
9. The application was supported by the affidavit of ESTHER WAIRIMU GICHUHI in which she deponed that the applicants are the closest relatives to the deceased and that they are in actual occupation of the disputed land and in support thereof she has annexed a letter from the chief.
10. The application was opposed by the petitioner through a replying affidavit filed on 28th September 2012 in which he deponed that MBOGO MUNAHU deceased had four wives MARY WAMBUI MBOGO, ANNAH WAMBUI MBOGO, LYDIA WANJIRU MBOGO and WANJIRU MBOGO.
11. That the deceased was the son of WANJIRU MBOGO while the petitioner NDUNGU MBOGO and ESTHER WANGECHI are children of MARY, ANNAH WAMBUI MBOGO and the applicant and JUDY WANGARI NDONGA are daughter of MILKA NYAKIBUI MURUTHI deceased and JAMES MUTHIMA MBOGO SAMUEL KABARI MBOGO and CHARLES MURAGE MBOGO are children of MARY WAMBUI MBOGO
12. Directions were given that the matter be determined by affidavit evidence and written submission which have now been filed.
13. From the submissions filed herein and affidavit evidence on record the only issue for the courts determination is as to whom between the step brothers and the nieces of the deceased are entitled to inherit the deceased property.
14. A clear reading of section 39(1)(1) of Cap 160 states as follows:
 - c) Brothers and sisters and any child or children of the deceased brothers and sisters in equal shares or if none
 - d) half brothers and half sisters and any child or children of the deceased half brothers and half sisters in equal shares.
15. This to my mind means that the protesters rank higher than the petitioner.
16. However to enable the court arrive at an appropriate distribution of the estate here the issue of who resides of MWEIGA/GAKANGA/138 is issue for oral evidence. There is also the issue as to whether the objectors are living with their parents or in the deceased estate herein.
17. I therefore direct that the protest be determined by way of oral evidence and hearing dates thereon be fixed at the registry.

Dated and delivered at Nyeri this 21st day of February 2013.

J. WAKIAGA
JUDGE

Applicant in person

No appearance by Mr. Theuri

Court: ruling read in open court in the presence of the above named.

J. WAKIAGA
JUDGE