



REPUBLIC OF KENYA

High Court at Nyeri

Succession Cause 823 of 2010

IN THE MATTER OF THE ESTATE OF

GITARI MUNYORI *alias* ELIJAH GITARI MUNYIRI DECEASED

AND

MUNYORI GITARIPETITIONER

RULING

1. The Petitioner was issued with letters of administration herein and on 21st June 2011 took out summons for confirmation of grant.
2. On 11th March 2011 the protester PATRICT GICHUKI GITARI filed an affidavit of protest on the basis that his father had two wives and the daughters of the first wife namely Esther Muthoni Gikonyo and Beatrice Nyanjau were not informed nor cited when this cause was filed.
3. That some of the assets of the deceased were omitted and that Tetu/Kiriti/15 had been given to him by the deceased during his lifetime. He therefore opposed to the mode of distribution proposed by the petitioner.
4. Directions were given that this matter be determined by affidavit evidence and submissions which have now been filed before the court.
5. The petitioners by leave of this court filed a further affidavit where they deponed that the deceased had not transferred LR TETU/KIRITI/15 to anybody and that it was still in his name at the time of filing this cause.
6. That it is not true that the deceased had a parcel of land known as Tetu/Kiriti/24 as alleged by the protester.

SUBMISSIONS

7. It was submitted by the protester that he together with David Mwangi and Mary Njeri wa Kahu are sons and daughters of the deceased and that two of the deceased daughters namely Esther Muthoni Gikonyo and Beatrice Nyanjau were never included though their names were included in the chiefs introductory letter.
8. He therefore submitted that the issue of distribution of Tetu/Kiriti/16, plots 11 and 15 is not contested save that it may disinherit the two ladies.

9. In respect of Tetu/Kiriti/15 he submitted that it had been transferred to him and produced a search to that effect.

10. On behalf of the petitioner it was submitted that the official search produced by the protester issued on 19/11/2011 referred a registration that was effected fraudulently and deliberately backdated.

11. Before the cause was filed the Petitioner did a search on 3rd February 2010 and the property was in the name of the deceased.

12. This court has said before and I repeat that this is not a protest which should have been heard by way of affidavit evidence and submissions since there are conflicting documents which can only be proved by way of oral evidence and cross examination.

13. I therefore direct that the protest be heard by way of oral evidence and dates fixed at the registry.

Dated and delivered at Nyeri 18th day of April 2013.

J. WAKIAGA

JUDGE

Mr. Kimunya for Mr. Kiminda for the petitioner

No appearance for the Protester

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

J. WAKIAGA

JUDGE