



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYERI

SUCCESSION CAUSE NO. 195 OF 2010

**IN THE MATTER OF THE ESTATE OF KARIUKI MUIGUA ALIAS KARIUKI S/O MUIGUA
ALIAS KARIUKI MUIGWA – (DECEASED)**

CHARITY WANJUGU KARIUKI ALIAS

CHARITY WANJUGU KAROKIPETITIONER

VERSUS

FESTUS MUIGUA KARIUKI1ST PROTESTOR

WINROSE WANJIKU KARIUKI2ND PROTESTOR

JUDGMENT

This judgment is the out come of the summons for confirmation of grant dated 14.12.2011 taken out by **Charity Wanjugu Kariuki alias Charity Wanjugu Karoki** hereinafter referred to as the Petitioner and the subsequent Protest filed by **Festus Muigua Kariuki and Winrose Wanjiru Kariuki** hereinafter referred to as the Protestors. With the approval of the parties, this court directed the dispute to be determined by affidavit evidence.

I have considered the facts deponed in the rival affidavits plus the written submissions filed herein. The Petitioner being the deceased's daughter took out citation proceedings to succeed the Estate of her father when the Protestors and their siblings failed to apply for letters. The Protestors opposed the citation proceedings claiming that the Petitioner had failed to contribute to the costs of filing the succession proceedings. In the end, this court proceeded to grant the Petitioner temporary letters of administration intestate on 4th January, 2011. In the summons for confirmation of grant the Petitioner proposed to distribute the only asset of the Estate i.e **L.R.No. Ruguru/Gachika/65** as follows:

1. **Charity Wanjugu Kariuki (petitioner)** - 2.75 acres
2. **Festus Muigua Kariuki** - 2.75 acres
3. **Isaac Njuguna Kariuki** - 2.75 acres
4. **Winrose Wanjiru Kariuki** - 2.75 acres
5. **Moses Kariuki Ndirangu** - 2.75 acres
6. **Charles Munene** - 2.75 acres

Festus Muigua Kariuki and Winrose Wanjiru Kariuki filed an affidavit of Protest to oppose the Petitioner's mode of distribution on the basis that the Petitioner belongs to another house which had already received their share of the Estate which is not included in these proceedings. It is said the

deceased had already given her family a share of the Estate inter vivos hence **L.R. No. Ruguru/Gachika/65** should be shared as follows:

1. **Festus Muigua Kariuki** - 5.5. acres
2. **Isaac Njuguna Kariuki** - 5.5. acres
3. **Winrose Wanjiru Kariuki** - 2.025 acres
4. **Moses Kariuki Ndirangu** - 3.025 acres
5. **Charles Munene** - 3.025 acres

The Petitioner admitted that the deceased was a polygamous man but denied ever receiving any share inter vivos from the deceased. She challenged the Protestors to avail credible evidence to establish their claim.

After a careful consideration of the affidavit evidence and the submissions, it is clear in my mind that the deceased had a polygamous marriage. It is also not in dispute that the Petitioner and the Protestors save for Winrose Wanjiru Kariuki, the deceased's grant daughter are all children of the deceased. The Protestors did not list the assets they claimed had been given to the house of the Petitioner. I am therefore not satisfied that the Petitioner received a share inter vivos from the deceased. In the circumstances of this case **Section 40** of the **Law of Succession Act** comes into play. Where the deceased is no survived by any spouse, the Estate should be shared equally between the children. In the circumstances of this case it would appear the Protestors intended not to share the Estate with the Petitioner. I find the Petitioner's proposed schedule of distribution largely conforming with the provisions of **Section 40** of the **Law of Succession Act**. I see no merit in the Protest. Consequently, the grant is confirmed as prayed in the summons for confirmation of grant. Since the dispute involves close family members, I direct that each party meets his or her own costs.

Dated, signed and delivered this 23rd day of August, 2013

J.K. SERGON

JUDGE

In open court in the presence of Muthoni for the Petitioner/Applicant

N/A for Respondent