



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYERI

SUCCESSION CAUSE NO. 279 OF 2010

IN THE MATTER OF THE ESTATE OF NGARI NDEGWA – (DECEASED)

ELENER WANGUI GICHERU PETITIONER

VERSUS

SAMUEL WAMUTITU NGARI.....1ST PROTESTOR

MARY WANGUI NDICHU.....2ND PROTESTOR

STEPHEN MAINA WAMUTITU3RD PROTESTOR

JUDGMENT

A grant of letters of administration intestate in respect of the Estate of **Ngari Ndegwa**, deceased was given to **Elener Wangui Gicharu** on 7th September, 2010. **Elener Wangui Gicheru**, hereinafter referred to as the Petitioner has now taken out the summons for confirmation of grant dated 8th February, 2011 seeking to have the grant confirmed. The summons attracted two affidavits of Protest. One affidavit was jointly sworn by Samuel Wamutitu Ngari, Mary Wangui Ndichu and Stephen Maina Wamutitu (**Protestors**) and the other is jointly sworn by Perpetua Mumbi, Ann Wangu Muriuki and Pauline Njeri Wachira. When the cause came up for hearing, this court with the concurrence of the Petitioner directed the dispute to be disposed of by affidavit evidence and by written submissions.

I have considered the facts deponed in the affidavits filed in support of the summons for confirmation of grant and the affidavits of protests together with the written submissions. It is not in dispute that the only asset of the Estate is **L.R. No. Magutu/Gathehu/109**. The Petitioner identified the beneficiaries of the Estate as:

1. **Perpetua Mumbi**
2. **Ann Wangu Muriuki**
3. **Pauline Njeri Wachira**
4. **Samuel Wamutitu Ngari**
5. **Elener Wangui Gicheru**
6. **Mary Wangui Ndichu**

She proposed for the aforesaid asset to be shared in equal measure between Mary Wangui Ndichu, Samuel Wamutitu Ngari and Elener Wangui Gicheru. It is the averment of the Protestors i.e Perpetua Mumbi, Ann Wangu Muriuki, Pauline Njeri Wachira, Samuel Wamutitu Ngari, Mary Wangui Ndichu and Stephen Maina Wamutitu that the deceased had shared out his land inter vivos and that he had physically demarcated the land and placed each beneficiary on his rightful portion as follows:

1. **Samuel Wamutitu Ngari** - 3.0 acres
2. **Mary Wangui Ndichu** - 3.0 acres
3. **Stephen Maina Wamutitu** - 2.0 acres
4. **Elener Wangui Gicheru** - 1.0 acre

5. **Simon Mungai Maina**
6. **Florence Wanjiru Maina** - 1.0 acre jointly
7. **Nancy Mumbi Maina**
8. **Mercy Nduta Maina**

In a further affidavit, the Petitioner admitted that the deceased had during his life time demarcated his land save that her late mother Florence Wanjiru Ngari had been allocated 2.7 acres. The Petitioner further pointed out that Stephen Maina Wamutitu ought not to benefit from the Estate since he is a son of Samuel Wamutitu Ngari a brother to the deceased, hence he is not a beneficiary. It is said if he is allowed to be a beneficiary of the Estate, he will unjustly enrich himself she will have inherited as well as his father did. In the further affidavit the Petitioner proposed to have the Estate shared out as follows:

1. **Samuel Wamutitu Ngari** - 2.76 acres
2. **Mary Wangui Ndichu** - 2.76 acres
3. **Elener Wangui Gicheru** - 2.76 acres

4. **Simon Mungai Maina**
5. **Florence Wanjiru Maina** - 1.0 acre jointly
6. **Nancy Mumbi Maina**
7. **Mercy Nduta Maina**

After a careful consideration of the affidavit evidence and the submissions it is clear that the deceased was survived by the following:

1. **Samuel Wamutitu Ngari**
2. **Mary Wangui Ndichu**
3. **Perpetua Mumbi**
4. **Ann Wangui Muriuki**
5. **Pauline Njeri Wachira**

It is also not in dispute that the deceased had another daughter who pre-deceased him namely: Florence Wanjiru Ngari, the mother of Elener Wangui Gicheru (*Petitioner*) and a son namely the late Simon Maina Ngari who was survived by four children namely: Simon Mungai Maina, Florence Wanjiru Maina, Nancy Mumbi Maina and Mercy Nduta Maina. The parties are in agreement that the deceased had demarcated his land inter vivos. I am convinced, the deceased gave his grandson namely Stephen Maina Wamutitu 2.0 acres of his land. There is express renunciation by the deceased's married daughters namely: Pauline Mumbi, Ann Wangui Muriuki and Pauline Njeri Wachira from seeking to inherit their father's Estate. I am also convinced that Elener Wangui Gicheru (*Petitioner*) is entitled to share half the entitlement due to her late mother Florence Wanjiru Ngari and the other half should go to the children of her late brother Simon Maina Ngari i.e Simon Mbugua Maina, Florence Wanjiru Maina, Nancy Mumbi Maina and Mercy Nduta Maina. In other words the Petitioner should get 1 acre out of the 2

acres entitled to the Petitioner's mother while the remaining 1 acre should go to the children of the late Simon Maina Ngari under **Section 41** of the **Law of Succession Act**.

In the final analysis, I am convinced the Protest has merit. The deceased having during his life time expressed his wishes by demarcating his land, the distribution of the Estate should be in accordance with those wishes. I direct that the grant should be confirmed in terms of paragraph 6 of the affidavit of Protest. For the avoidance of doubt the grant be confirmed and distribution of **L.R.No.Magutu/Gathehu/109** be done as follows:

- | | |
|---------------------------|--------------------|
| 1. Samuel Wamutitu Ngari | - 3.0 acres |
| 2. Mary Wangui Ndichu | - 3.0 acres |
| 3. Stephen Maina Wamutitu | - 2.0 acres |
| 4. Elener Wangui Gicheru | - 1.0 acre |
| 5. Simon Mungai Maina | |
| 6. Florence Wanjiru Maina | - 1.0 acre jointly |
| 7. Nancy Mumbi Maina | |
| 8. Mercy Nduta Maina | |

Since the dispute involves close family members, I order 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 Mr. Kingori for Applicant and Karingithi for Respondent