



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NYERI
SUCCESSION CAUSE NO. 742 OF 2011

IN THE MATTER OF THE ESTATE OF NJERI KARANJA – (DECEASED)

MONICAH NJERI MWANGI PETITIONER

VERSUS

PETER KARANJA MWANGIPROTESTOR

JUDGMENT

A grant of letters of administration intestate in respect of the Estate of **Njeri Karanja**, deceased was made to **Mary Wambui Mwangi** who later passed on and was replaced by **Monicah Njeri Mwangi** on 2nd August, 2010. **Monicah Njeri Mwangi** hereinafter referred to as the Petitioner has now taken up the summons dated 18.8.2010 seeking to have the grant confirmed. **Peter Karanja Mwangi**, hereinafter referred to as the Protestor opposed the summons by filing an affidavit of Protest he swore on 30th September, 2010. This directed the dispute to be determined by affidavit evidence and by written submissions.

I have carefully considered the averments made by the parties herein. In the summons for confirmation of grant the Petitioner proposed for the Estate to be distributed as follows:

1. **Monica Njeri Mwangi to get 5.5 acres**
2. **Joseph Kamande Mwangi to get 2.5 acres**
3. **John Kanyutu Mwangi to get 1.0 acre**
4. **Peter Karanja Mwangi to get 1.0 acre**

John Kanyutu Mwnagi and Peter Karanja Mwangi (*Protestors*) each filed affidavits of Protest to oppose the application claiming the deceased had shared out her land inter vivos as follows:

1. **Peter Karanja - 3.3 acres**
2. **Joseph Kamande - 3.3. acres**
3. **John Kanyutu - 3.3. acres**

They also averred that the Partitioner was not a wife of the deceased. They further alleged that one John Kamande Ngugi was using the Petitioner to grab the deceased's land.

When faced with the above averments, the petitioner filed a further affidavit and sought for the support of Mary Wanjiku Muiruri, Joseph Kamande Mwangi and Francis Wainaina Njogu. It was averred that the deceased married Mary Wambui Mwangi under the Kikuyu marriage known as Polyandry, hence Mary Wambui Mwangi or her successor is entitled to succeed the deceased. Monica Njeri Mwangi averred that since Kanuthu Karanja was not bearing children she married her to bear children for her. The

deceased's husband one Karanja Wakumbau had three wives namely; Njeri Karanja, Kanuthu Karanja and Wanjiru Karanja. It is also averred that the deceased was registered as the owner of **Loc. 7/Ichagaki/645** as trustee for her family and her two co-wives since she was the eldest wife of Karanja Wakumbau. Monicah Njeri Mwangi further alleged that she was chased away from the aforesaid land in 1974 but did not mean her dependency with the deceased within the meaning of **Section 29** of the **Law of Succession Act** lapsed. She claimed her children being the deceased's grandchildren were entitled to a share of the Estate as proposed by the Petitioner. The Petitioner also avers that she purchased 1 acre from Francis Wainaina Njogu which parcel was consolidated with 2 acres to comprise **Loc.7/Ichagaki/645**. This claim complicates the dispute. This may explain the reason why the Petitioner proposed to give herself a bigger portion of the Estate land.

Having carefully considered the evidence tendered by both sides, there is an allegation that one acre comprising **Loc.7/Ichagaki/645** is owned by the Petitioner. It is said the deceased held the same in trust for the Petitioner. I think it is only fair to have this claim established before proceeding to confirm the grant. Consequently, I order that these proceedings be stayed for 90 days. In the meantime, the Petitioner is directed to take out the necessary proceedings to establish her claim under **Rule 41(3)** of the **Probate and Administration Rules**. Costs shall abide the outcome of the aforesaid proceedings.

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

J.K. SERGON

JUDGE

In open court in the presence of Mr. Kiminda holding brief for

Njoroge for Petitioner

N/A Protestor