



REPUBLIC OF KENYA

IN THE HIGH COURT

AT EMBU

Civil Appeal 27 of 2007

BETH MUTHONI GICHOBI..... APPELLANT

VERSUS

ALICE WAMARUA GICHOBI RESPONDENT

(An Appeal from the Judgment of A.K. ITHUKU – SRM sitting at KERUGOYA in Civil Suit No. 88 OF 2005 delivered on 16/3/2007).

R U L I N G

The Applicant and Respondent herein are widows of the deceased “*Gichobi Njaruui*”. A joint grant was issued to them by this Court on 29/1/2009.

The Applicant filed summons for confirmation of grant dated 17/1/2011 on 19/1/2011. In her affidavit she proposed to distribute the estate comprising of 6.6 acres in land parcel number INOI/KERUGOYA/211 as follows;

1. Applicant and her seven children 4.4 acres
2. Respondent and her three children 2.2. acres

The Respondent protested against the said distribution. She filed an affidavit dated 21/9/2011 suggesting that the estate be distributed into two equal shares i.e. each house getting 3.3. acres.

Both parties filed written submissions supporting their stand.

It is clear from the record that the deceased was survived by two widows and 10 children. The deceased died intestate on 23/12/2001. His estate is therefore subject to the operations of the Law of Succession Act. And the relevant provision applicable is section 40(1) of the Law of Succession Act. It provides;

“where an intestate has married more than one wife under any system of law permitting polygamy his personal and household effects and the residence of the net intestate estate shall in the first instance be

divided among the houses according to the number of children in each house, but also adding any wife surviving him as an additional unit to the number of children”.

From the provision above it is now clear that the number of houses is first identified. Thereafter the number of children in each house are considered. Thereafter the number of surviving wives is included as an additional unit to the number of children. In this case we have two houses. The 1st house of Alice Wamarwa Gichobi has three children. The 2nd house of Beth Muthoni Gichobi has seven children. The deceased was survived by two widows. When these widows are added to their children we find the following;

1st house = 3 children + widow (4 units)

2nd house = 7 children + widow (8 units)

The Act does not distinguish the children based on gender or marital status. Therefore the number of units in this estate as per the provisions of section 40 (1) Law of Succession Act is 12 units. It's therefore these units that have to equally benefit from this estate. It must also be made clear to the parties herein that there is no way the house with more children would equally share out property with the house with less children. That is the import of section 40(1) Law of Succession Act. Going by the arithmetic it would come to each unit getting 0.55 acre. And for the 2nd house this would come to $0.55 \times 8 = 4.4$ acres while the 1st house would get $0.55 \times 4 = 2.2$ acres.

I therefore find that the distribution by Alice Wamarwa is not acceptable under the provisions of section 40(1) Law of Succession Act. The upshot of this is that the land parcel No.INOI/KERUGOYA/211 will be shared out as follows;

1. 1st House Alice W. Gichobi and her three children – 2.2 acres
2. 2nd house Beth Muthoni Gichobi and her children – 4.4 acres

Orders accordingly.

DATED, SIGNED AND DELIVERED AT EMBU THIS 6TH DAY OF JUNE 2012.

H.I. ONG'UDI

JUDGE

In the presence of:

Mr. Muraguri for Magee for Appellants

Respondent

Njue – C/c