



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT MERU**

**Succession Cause 122 of 2009**

**KATHONI M'MARETE.....PETITIONER**

**VERSUS**

**JOHN MUTUGI M'MARETE.....PROTESTOR**

**RULING**

The petitioner brought an application for confirmation of the grant issued by this court on 19<sup>th</sup> June 2009. The application is a Summons dated 8<sup>th</sup> August 2011.

The son of the deceased JOHN MUTUGI M'MARETE protested to the confirmation by refusing to sign the consent on the confirmation and mode of distribution of the estate. The court declined to confirm the grant. Eventually the parties came before court and were advised each to file an affidavit giving the mode of distribution they suggest.

Both the petitioner and the protestor have filed their affidavits. The affidavit by the protestor has not given any suggestions on the mode of distribution instead the protestor states he has taken over his mother's share of the devolved estate of the deceased being the only son of his father. He complains of one Mugambi, a purchaser of being allowed to buy as portion of the deceased land which falls within the first house and the basis of the complaint is that his late father never mentioned to him that he was selling land to third parties.

The affidavit by the petitioner has listed all the properties the deceased ever owned. These are LR. NO.KIAMURI 'A'/1433 AND 'A'/263 both which were registered in the name of the protestor. The green cards are annexed showing the titles are in protestor's names.

This was done before the deceased died. Both parcels total 3.6 Ha. The third and remaining property is LR NO. 'A'/265. It measures 10 acres according to the petitioner and 14 acres according to the protestor. The petitioner proposes to have it shared as follows:-

Mugambi Rugaru Barono- purchaser - 3 acres

Kathoni M'Marete (petitioner) to hold in trust for Rose Mary Gakeri, Ann Lucy Kaimenyi, Anjerica Gaceri and Evaline Gakii the balance.

Section 40 of Law of Succession Act provides that where an intestate had married more than once, his estate should be divided among the houses according to the number of children in each house. In the instant case, the deceased had already given a very large portion of his assets to the protestor and his mother before he died. The remaining asset was left and it was understood that it would be shared between the widow and children of deceased by the first wife. I do find that the protestor has been overly provided for. Even the 1 acre the petitioner was proposing to give him in the initial application for confirmation of grant clearly is undeserved.

I find that the first house should share the balance of the estate of the deceased subject to acreage bought by Mr. Mugambi Borono.

I will therefore order that:-

1. The land parcel No.KIAMURI 'A'/265 be shared as follows:

- a. Mugambi Rugaru Borono - 3 acres
- b. The balance to be shared equally between
  - i. Kathoni M'Marete
  - ii. Rose Mary Gakeni
  - iii. Ann Lucy Kaimenyi
  - iv. Anjerica Gaceri
  - v. Evaline Gakii

2. Each party will bear their own costs.

Dated, signed and delivered this 31<sup>st</sup> day of July, 2012.

**LESIT, J**  
**JUDGE**