



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYERI

SUCCESSION CAUSE 12 OF 1983

IN THE MATTER OF THE ESTATE OF KUGWA GAITHO(DECEASED)

AND

PUBLIC TRUSTEE.....ADMINISTRATOR

Versus

ELIZABETH WAMBUI.....PROTESTOR

JUDGMENT

The matter before the court is the hearing of a protest to the proposed mode of distribution of the estate of the deceased. The parties herein had agreed by consent that the same be disposed of by way of written submission which have been filed by all the parties.

It was further agreed that the evidence of one Kiongo Mati be taken in respect of an alleged oral will of the deceased KUGWA GAITHO.

When the said Kiongo Miti appeared before the court on 25th June 2002 he testified that the deceased was his uncle and that when he visited the same in hospital he was instructed to buy an exercise book to enable the deceased give him instruction on his estate. That when he started to write the instruction the deceased eldest son called Ngunjiri Kugwa came and found him in the process.

That three months after the deceased passed on he went to his estate and told his children what their father had said and they did not object to the same.

That he subsequently went to the Public Trustee together with the children of the deceased and with the said book. The officer at the said office informed them on how wills are executed and he informed the officer that the children of the deceased did not agree with the distribution as contained therein. That the Public Trustee Officer retained the said book.

It was the evidence of the said witness that the deceased had given land to all his children. In respect of RUGURU/GACHIKA/214 the deceased stated that he had left it to WACHIRA WAMBURA and WACHIRA WAIRIMU and their children. It was also to be shared by WAIHENYA AND KAMENJU but did not give acreage.

Cross examined by Miss Mwai he testified that the deceased had a farm at Kiamanga and that the children of the protestor and herself are the ones who stays at the said farm and that the protestor was not staying with her husband at the time when she went to settle there. He testified that Wachira and her brother continued to stay with the deceased and did not follow their mother to the said farm.

From the affidavits and written submissions of the parties herein the only asset of the deceased which is in contention is RUGURU/GACHIKA/214.

The Public Trustee as the administrator proposes that the said land be shared as follows:

12 acres to PURITY WAIRIMU KUGWA to be registered in the names of CHARLES MWANGI NGUNJIRI, JACKLINE WANGECHI NDEGWA and DAVID KAMENJU KUGWA in their personal capacity and as trustee for PURITY WAIRIMU, GEORGE WACHIRA WAIRIMU and RACHEAL WAMBURA WAIRIMU (all who are mentally challenged) The remaining portion to be shared equally between JOSEPH WAIHENYA KUGWA, JAMES GATHIGA KUGWA, ESTHER WAIRIMU KAMENJU, ELIZABETH WAMBURA KUGWA, MARY WANGUI NGUNJIRI and SALOME WAIRIMU NGUNJIRI.

The interested party herein JOSEPH WAIHENYA KUGWA has also adopted the line put forward by the Public Trustee as regards the disputed land and further stated that the protestor is not entitled to 12 acres claimed since she had been given 14.5 acres in Kiamanga by her father.

The protestor in her written submission has submitted that the dispute is over RUGURU/GACHIKA/214 and MUHITO/MUYU/81.

It is her submission that she is the loser and that the protestor would only get 4.65 acres while the other daughter is given 12 acres. To her in line with what she calls her father's wishes she is entitled to 12 acres leaving 16 acres to be shared amongst the rest. She further proposes that MUHITO/MUYU/81 should go to Mary Wangui Ngunjiri the wife of the late Joram Ngunjiri Kugwa of note is that the protestor has not made any mention of the 14.5 acres in Kiamanga which allegedly had been given to her by the deceased in his life time.

I have had a look at this matter in totality and take into account the oral evidence of Kiongo Miti who under cross examination confirmed that the protestor is staying as Kiamanga farm which as per his evidence belonged to the deceased. I therefore make a finding of fact that protestor was given 14.5 acres by her father and therefore her submission that she is the loser has no basis in fact and in law. I have also noted as fact that all the protestor's children went with her to the said farm save for two sons who remained with their grandfather.

I also make a finding of fact that whereas it is alleged that the deceased had expressed the intention that the protestor and his sister be given the land he also mentioned the other children and did not give any acreage.

I therefore find no merit in the protestor's protest herein and dismiss the same with no order as to cost. I therefore direct that the mode of distribution of the said land be as per proposed by the Public Trust.

Dated and delivered at Nyeri this 24th day of July 2012.

J. WAKIAGA
JUDGE

Delivered in open court.

H. Ndirangu for the protestor

Miss Mwai for interested party

No appearance for the Public Trustee.

J. WAKIAGA

JUDGE