



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NYERI

SUCCESSION CAUSE NO. 263 OF 2009

In the matter of the estate of Kinyangai Ndaaru (Deceased)

ELIZABETH WAMBUI M.....APPLICANT

VERSUS

NYAMBURA NDAARO.....RESPONDENT

RULING

On 20th February 2007, Nyambura Ndaaro, the Petitioner herein, was given a temporary grant of Letters of Administration in respect of the Estate of Kinyanjui Ndaaro alias Kinyangae Ndaaro, deceased. The Petitioner took out the Summons of Grant dated 17th April 2007 in which she applied for the grant to be confirmed. Elizabeth Wambui Kinuthia, hereinafter referred to as the Protestor, filed an affidavit of protest to oppose the Summons for Confirmation of Grant. This Court directed the dispute to be disposed of by affidavit evidence and by written submissions.

I have considered the affidavit evidence and the written submissions filed by both sides. In the Petitioner's affidavit filed in support of the Summons for Confirmation of Grant, the Petitioner identified the beneficiaries of the Estate as follows:

Nyambura Ndaaro Kinyangai	-	Daughter-in-law
Elizabeth Wambui M. Kinuthia	-	Daughter-in-law
Harrison Kinyangai Ndaaro	-	Grandson
Michael Kinuthia Ndaaro	-	Grandson
Michael Kinuthia Ndaaro	-	Grandson
Beatrice Lydia Njoki Ndaaro	-	Grand daughter
Mugechi Kinuthia	-	Granddaughter
Wanjiku Virginia	-	Grand daughter
Nyambura Kinuthia	-	Grand daughter

Waithira Kinuthia - **Grand daughter**

Kinyangae Kinuthia - **Grandson**

She proposed the Estate to be distributed as follows:

(A) **LAND PARCEL NO. LOC.11/MARAGI/146 shared as follows:-**

- **Nyambura Ndaaro Kinyangae and Beatrice Lydia Njoki (inherited by Eric Ndaaro Njoki)**
- **0.77 acres**

Harrison Kinyangae Ndaaro - 0.77 acres - **0.77 acres**

Michael Kinuthia Ndaaro – 0.77 acres - **0.77 acres**

(b) **LOC.11/MARAGI/146 TO BE SHARED AS FOLLOWS:**

Harrison Kinyangae Ndaaro - **0.4 acres**

Michael Kinuthia Ndaaro - **0.4 acres**

(c) **LOC.11/GIKANDU/332**

Nyambura Ndaaro Kinyangae - **1.15 acres**

Elizabeth Wambui M. Kinuthia – **0.45 acres**

In her affidavit of protest, the Protestor proposed that the Estate should be shared equally between the Petitioner and the Protestor, both being the deceased's daughters-in-law. I have also considered the rival submissions. It is not in dispute that the Petitioner and the Protestor are daughters-in-law of the deceased. The Petitioner is the widow of Ndaaro (now deceased) while the Protestor is the widow of Kinuthia (also deceased). It is the submission of the Petitioner that the Estate should be distributed as per her proposal because of the following reasons: First, that the deceased had during his lifetime given to Kinuthia Kinyangae, the Protester's late husband L.R. NO. LOC.11/MARAGI/154, a parcel of land measuring 3.8 acres or thereabouts while the Petitioner's late husband, Ndaaro Kinyangae was not given land. This assertion was not controverted by the Protestor in her affidavit of Protest save for what her advocate stated in his written submissions where the learned advocate argued that the late Kinuthia Kinyangae had personally acquired LOC.11/MARAGI/154. I do not know why the Protestor did not deem it fit to file an affidavit to avail the relevant documents to prove the above allegation. I have no reason to doubt the uncontroverted allegation that the deceased gave intervivos to the Protestor's late husband LOC.11/MARAGI/154. Under the provisions of the Law of Succession Act and the rules therein, the Court is mandated to take into account gifts given intervivos to a beneficiary before distributing the net Estate. Taking the gift intervivos given to the late Kinuthia Kinyangae, I am satisfied the fairest mode of distribution is that proposed by the Petitioner herein. Consequently, I see no merit in the Protest. I order that the grant be confirmed as prayed in the Summons for Confirmation of Grant dated 17th April 2007. Each party to meet her own costs.

Dated and delivered this 2nd Day of August, 2012.

J. K. SERGON
JUDGE