



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NYERI
SUCCESSION CAUSE 762 OF 2008

In the matter of the estate of the late Jane Njeri Kariuki (deceased)

And

BENSON MBATIA (SUBSTITUTED WITH LORNA NYOKABI)

SAMSON KABUGI KARIUKI

STEPHEN MURIRU KARIUKI.....PETITIONERS

RULING

On the 2nd day of August, 2007 a temporary grant of Letters of Administration intestate in respect of the Estate of Jane Njeri Kariuki, deceased, was issued in the joint names of Benson Mbatia Kariuki, Samson Kabugi Kariuki and Stephen Muriro Kariuki. The aforesaid grant was confirmed on 22nd April 2009. In the confirmed grant, the assets of the Estate were distributed as follows:

(A) LAND PARCEL NO. LOC. 10/GATHERU/370

(i) SARAPHINA WANGECHI MWANGI) to get equal shares.

(ii) LORNA NYOKABI MBATIA) to get equal shares.

(iii) TERESIAH NJUGUINI MUNENE) to get equal shares.

(iv) SAMSON KABUGI KARIUKI) to get equal shares

(v) STEPHEN MURIRO KARIUKI) to get equal shares.

(B) SHARES IN WANGU INVESTMENT COMPANY LIMITED

(i) SARAPHINA WANGECHI MWANGI) to get equal shares

(ii) LORNA NYOKABI MBATIA) to get equal shares.

(iii) TERESIAH NJUGUNUINI MUNENE) to get equal shares.

(iv) SAMSON KABUGI KARIUKI) to get equal shares.

(v) STEPHEN MURIRO KARIUKI) to get equal shares.

Lorna Nyokabi Mbatia, one of the beneficiaries, was prompted to apply to this Court to make an order to dispense with the production of the original title in respect of LOC.10/GATHERU/370 before issuing new title deeds for the resultant title deeds when Stephen Muriro Kariuki refused to hand over the original title deed. She was granted the orders on 5th February 2010. Upon obtaining the orders, the next hurdle was how to subdivide the land. The beneficiaries were unable to agree on how the land should be subdivided. The stalemate prompted this Court to issue an order directing the Murang'a District Land surveyor to visit the land and carry out the survey and file a report in this Court. The District Land surveyor complied with this Court's directive and filed his report in Court on 25th August 2011. Mr. Kingori, learned advocate for Saraphinah Wangechi Mwangi, one of the beneficiaries, informed this Court that the Surveyor's report did not conform with the confirmed grant. This Court then retired to peruse the surveyor's report to confirm whether the same conforms with the confirmed grant. That is the subject matter of this ruling.

I have carefully perused the report of Mr. I.W. Wainaina, the Murang'a District land Surveyor dated 22nd August 2011. In my view I am convinced the district Surveyor professionally undertook his duties in carrying out the survey work and in giving this Court a comprehensive report. I have no reason to doubt the veracity of the surveyor's report. I am satisfied that the most appropriate and reasonable manner of subdividing and distributing LOC.10/GATHERU/370 is to adopt and approve which I hereby do the surveyor's proposal No. 8 which reads as follows:

The appropriate proposal is the homestead area and the grave area to e owned jointly and the remainder be partitioned equally by the beneficiaries as shown on the attached sketch map 2; this proposed mode of partition is recommended since it meets the surveying standards and actually is the same the beneficiaries had agreed on before the land registrar on 21st Feb. 2011.

The survey work should be done as proposed hereinabove. The suggestion strictly complies with the terms of the confirmed grant. This being a dispute between members of the same family, I order that each one of them meets his or her own costs.

Dated and delivered at Nyeri this 2nd day August of 2012.

J. K. SERGON
JUDGE