



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NYERI

SUCCESSION CAUSE NO. 598 OF 2006

**IN THE MATTER OF THE ESTATE OF CHRISTOPHER KAGUMBA
KARIAMBURI.....DECEASED**

AND

GLADYS WAMBUI

KARIAMBURIPETITIONER

Versus

PERIS WAIRIMU KAGUMBA

HUMPREY

KAGUMBA.....PROTESTORS

JUDGMENT

The Grant of letters of administration in respect of the estate of Christopher Kagumba Kariamburi, deceased was made to Gladys Wambui Kariamburi, the Petitioner herein, on 17th September 2008. The Petitioner applied for the grant to be confirmed vide the summons for confirmation dated 3rd July 2009. Peris Wairimu Kagumba and Humprey Kagumba the Protestors herein, each filed an affidavit of protest to oppose the summons. Directions were given to have the summons disposed of by affidavit evidence and by written submissions.

I have considered the affidavit evidence plus the written submissions. The Protestors herein are the widow and a son of the deceased while the Petitioner is the deceased's mother. The assets of the estate are

identified as follows:

- (i) L.R. No. Tetu/Ihururu/101
- (ii) L.R. No. Mugunda/Rurii Block I/Muthangari/77
- (iii) Gatuamba/Muhotetu Block 2/II
- (iv) Cash in Bank (Cooperative)

In her schedule of distribution, the Petitioner proposed for the aforesaid assets to be distributed as follows:

- (i) L.R. No. Tetu/Ihururu/101
 - Gladys Wambui Kariamburi - 2.05 acres
 - Peris Wairimu Kagumba - 2.05 acres

In trust for herself and children namely

Humphrey Kagumba, Daniel Karuga, Kariamburi

Kagumba, Albert Kagumba and Gladys Wambui.

(ii) The other parcels to be registered in the name of Peris Wairimu Kagumba in trust for herself and her aforementioned children. Peris Wairimu Kagumba is of the view that the deceased had shared out the land to his sons grandson during his life time as follows:

- (i) L.R. No. Tetu/Ihururu/101 - to be shared equally between:
 - a. Humphrey Karuga
 - b. Albert Mwangi and
 - c. James Mbau
- (ii) L.R. No. Mugunda/Rurii Block1/Muthangira/77 to be shared equally between:
 - a. Humphrey Karuga and
 - b. Albert Mwangi
- (iii) L.R. No. Gituamba Muhotetu Block 2/II to be shared in equal measure between
 - a. Daniel Kori.
 - b. Moses Kariamburi
- (iv) Money in Bank to be given to Peris Wairimu Kagumba.

The Protestor also pointed out that the deceased during his lifetime had transferred 10 acres to be excised from L.R. No. Mugunda/Rurii Block 1/Muthangira/77 to Dominic Karuga, Patrick Kagumba and John Muchemi being his grandsons.

A careful consideration of the dispute before this court is basically on the distribution of the estate. It is a

contest between the deceased's widow and son on one hand as against the deceased's mother. In such a case, the person who takes preference to administer the estate is the deceased's spouse who in this case is one of the protestors. The dispute appears to be the sharing of the parcel of land known as L.R. No. Tetu/Ihururu/101. It would appear the Protestor did not provide for Petitioner in her schedule of distribution. Basically the deceased's widow is saying that her mode of distribution is in accordance with the deceased's wishes. The Petitioner's main ground is that according to Kikuyu customary law, a wife was not allowed to be registered as the owner of land. She claimed that parcel No. L.R. No. Tetu/Ihururu/101 was registered in the name of the deceased in his capacity as the eldest son of Alexander Kariamburi Kagumba, deceased. She claimed she has been in occupation of the aforesaid land for a long period of time. The Petitioner is of the view that she is not secure if not she is not given a portion because she fears the protestor may render her landless. After anxiously considering the issues in dispute I am inclined to agree with the mode of distribution given by the Protestor save that the Petitioner being the deceased's mother should be allowed to continue to occupy and till the portion she has been residing on and tilling as a life interest. Consequently the grant is confirmed in terms of the affidavit of protest save that the mode of distribution should be altered to allow the Petitioner occupy and use 2 acres in L.R No. Tetu/Ihururu/101 as a life interest.

I direct each party to meet his or her own costs.

Dated and delivered this 25th day of February 2011.

J.K. SERGON

JUDGE

In open court in the presence of Mr. Ng'ang'a for Protestor and the Petitioner in person.

J.K. SERGON

JUDGE