



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NYERI
SUCCESSION CAUSE NO. 273 of 2010
IN THE MATTER OF THE ESTATE OF MWAI WAIRIA

AND

NJOKI MWANGIPETITIONER

VERSUS

ROBINSON MATHERI MUHIAOBJECTOR

RULING

The grant of letters of administration intestate in respect of the estate of Peterson Mwai Wairia alias Mwai Wairia, deceased was made to Njoki Mwai, hereinafter referred to as the Petitioner on 18th September 2007 vide Murang'a P.M.C. Succession Cause No. 150 of 2007. The Petitioner has now applied for the grant to be confirmed vide the summons for confirmation of grant dated 21st April 2008. Robinson Matheri Muhia, hereinafter referred to as the Objector filed an affidavit of protest to oppose the summons. The parties herein recorded a consent order to transfer the succession cause to this court for hearing and determination on 8th March 2010. This court gave directions to the effect that the dispute be determined by affidavit evidence and by written submissions.

I have considered the affidavit evidence plus the rival submissions. The estate asset available for distribution is the parcel of land known as Loc.13/Gakoe/807. The Petitioner has proposed for that land to be shared in the following manner:

- Njoki Mwai - 1.22 acres
- Gladys Muthoni - 1.06 acres
- Justus Mwangi Mwai - 1.06 acres

- Patrick Njogu Kamau - 0.9 acres.

The objector on the other hand is opposed to the aforesaid proposal claiming that the aforesaid land originally belonged to his grandfather and that the same was registered in the names of the deceased to hold in trust for the objector's father, namely Henry Muhia Karuu who is also deceased. The objector claimed he is entitled to inherit 0.9 acres.

There is no doubt that the objector's claim is based on trust. Under rule 41(3) of the Probate and Administration Rules, the dispute can only be determined under order XXXVI rule 1(1), now order 37 rule 1 of the Civil Procedure Rules. It is necessary to give the protestor a chance to take out the necessary proceedings to establish his claim before deciding the dispute. I order that the summons for confirmation of grant and the protest be stayed pending the outcome of the proceedings to be undertaken under rule 41(1) of the Probate and Administration Rules. The Objector is directed to take out the aforesaid proceedings within 90 days from the date hereof. Cost of the proceedings to abide the outcome of this cause.

Dated and delivered this 25th day of February 2011.

J.K. SERGON

JUDGE

In open court in the presence of Mr. Mwangi h/b Gacheru for the Protestor and Mr. Ng'ang'a h/b Mwangi for Petitioner.

J.K. SERGON

JUDGE