



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NYERI

SUCCESSION CAUSE NO. 308 OF 2004

IN THE MATTER OF THE ESTATE OF WARUGURU KAMBORA (DECEASED)

MICHAEL GICHUHI KABORA..... APPLICANT

VERSUS

MOSES KIBUI KABORA.....RESPONDENT

JUDGMENT

The subject matter of this judgment is the Summons for Confirmation of Grant dated 11th March 2005 and the affidavit of Protest sworn on 25th May 2005. The dispute was directed to be determined by affidavit evidence and by written submissions.

I have considered the facts deponed in the affidavits filed in support of the summons and those deponed in the affidavit of Protest plus the written submissions. Michael Gichuhi Kabora, the Petitioner, has proposed that the only asset of the Estate i.e. **L.R. NO. MUHITO/THIKA/442** to be shared in the following ratio between the following:

1. Michael Gichuhi Kabora – 0.4 acres.
2. James Muriithi Kambora – 0.4 acres
3. Charles Gichuhi Kambora 0.7 acres.
4. Moses Kibue Kambora – 0.7 acres.

In the same breath, the Petitioner made the proposals:

- (i) Land given to Charles Gichuhi Kabora to be transmitted to Patrick Maina Gichuhi.
- (ii) The land given to Moses Kibue Kabora to be transferred to John Munyiri Muriithi.

Moses Kibue Kambora the protestor herein, opposed the Petitioner's proposal. He claimed that the Petitioner took up Letters of Administration without involving him. He claimed that the Petitioner managed to get title in respect of the parcel of land without his knowledge. He claimed that the Petitioner made a false averment when he stated that the Protestor had consented to his portion being given to John Munyiri Muriithi who according to him is a stranger to the Estate. The Petitioner averred in his further affidavit that the Protestor was involved right from the beginning in the application for the grant and that he never raised any objection. The Petitioner averred that the Protestor was provided for just like the other beneficiaries during the deceased's lifetime. He claimed the Protestor was given **L.R. NO.**

GITHI/KIREREMA/683. The Petitioner stated that the proposed distribution was in accordance with the deceased's wishes. He averred that the Protestor had sold his entitlement in **L.R. NO. MUHITO/THIHA/442** to John Munyiri Muriithi. The Petitioner stated that John Munyiri Muriithi was not therefore a stranger.

Having considered the rival submissions, it is now quite evident that the Petitioner applied for the grant in his capacity as the

Son of the deceased. The aforesaid parcel of land was transmitted to the deceased after a successful succession cause in the Estate of her late husband who was also the father of the Petitioner and the Protestor. I am convinced that the Protestor, the Petitioner with their siblings, was provided for by their deceased father, during his lifetime. I am also satisfied that the deceased's husband who was married to three wives reserved the parcel of land known as **L.R. NO. MUHITO/THIHA/442** to be shared by his wives. The first house is represented by Michael Gichuhi Kabora and James Muriithi Kabora were to get 0.8 acres while the 2nd and 3rd houses were to each get 0.7 acres. Those houses were represented by Charles Gichuhi Kabora and Moses Kibue Kambora respectively. I am also convinced that the Protestor herein had sold his entitlement to John Munyiri Muriithi. The Protestor admitted when he testified before this Court that he had sold his portion to John Munyiri Muriithi.

In the end, I see no merit in the Protest. I dismiss it and proceed to confirm the grant as proposed by the Petitioner. Since the dispute involves brothers, I direct that each of them meets his own costs.

Dated and delivered at Nyeri this 29th day of July 2011.

J. K. SERGON
JUDGE

In open court in the presence of Mr. Mugo for the Applicant and Mr. Mungai for the protestor.

J. K. SERGON
JUDGE