



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NYERI

SUCCESSION CAUSE NO. 371 OF 2000

IN THE MATTER OF THE ESTATE OF RICHARD AMOS KABANYA NJINE (DECEASED

NAOMI WAIRIMU

KABANYA.....PETITIONER

VERSUS

GLADYS WAMAITHA

MWANGI.....PROTESTOR

JUDGMENT

The grant of letters of administration intestate in respect of the Estate of Amos Kabanya Njine, deceased was issued to Samuel Githua Kabanya on 7th December 2005. The Petitioner has now taken out the summons for Confirmation of Grant dated 9th May 2006 seeking to have the grant confirmed. Samuel Githua Kabanya has filed two affidavits he swore in support of the summons. Gladys Wamaitha Mwangi has filed two affidavits of protest to oppose the Summons. When the dispute came up for hearing, learned counsels appearing in this matter recorded a consent order to have the same disposed of by affidavit evidence and by written submissions.

I have considered the grounds set out on the face of the summons for confirmation of grant plus the facts deponed in the affidavits filed in support and those filed in protest. I have further taken into account the written submissions. For ease of reference, Samuel Githua Kabanya will be hereinafter referred to as “the Objector” while Gladys Wamaitha Mwangi will be referred to as “the Protestor”. The affidavit evidence indicates that when the deceased passed away, his widow Naomi Wairimu Kabanya applied to succeed him. It is on record that Samuel Githua Kabanya filed an objection against Naomi Wairimu Kabanya being given letters of administration claiming that the widow wanted to transfer the deceased’s estate to Suleiman Mwangi. The deceased’s widow and Suleiman Mwangi died before the grant was confirmed. The Objector successfully applied to be appointed as an administrator of the deceased’s Estate in place of the deceased’s widow on 7th December 2005. The Objector has now come to court seeking to have the grant confirmed. The Protestor who is the widow of Suleiman Mwangi has filed an affidavit of Protest to oppose the Summons. The protestor’s complaint is that the Objector has entered into the agreement dated 21st October 2004 with his nephews to have the Estate shared out to her exclusion hence

the agreement should not be sanctioned. She proposed for the Estate to be shared out as per the deceased's wishes as follows:

- (i) ***L.R. No. Tetu/Karaihu/592***
Samuel Githua Kabanya – 1.5 acres
Gladys Wamaitha Mwangi – 3.2 acres

- (ii) ***Plot No. 9 Gatarakwa Market – Gladys Wamaitha Mwangi***

- (iii) ***Shares in Ngare Ndare – Samuel G. Kabanya***

- (iv) ***Shares in Gathuthi Tea Factory & Nyeri Farmers – to be shared equally between G. Kabanya and Gladys Wamaitha Mwangi.***

- (v) ***Money in Account No. 1972-03-37 with Nyeri Farmers Sacco Lt. – Gladys Wamaitha Mwangi.***

The Protestor claimed that the land to be transmitted to her should be bigger as shown in (i) above because her husband was the elder son of the deceased. She proposed that both the Objector and the Protestor will take care of the interests of the nephews. The Objector on his part proposed the deceased Estate to be shared as follows:

- (a) **L.R. TETU/KARAIHU/592**

Samuel G. Kabanya – ½ share.
Amos Kabanya Mwangi – ½ share
Francis Wamahiu Mwangi – ¼ share

- (b) **Shares with Gathuthi Tea Factory and Nyeri Farmers Sacco Ltd.**

To be shared in the same ratio as in (a) above.

- (c) **Money in account No. 1972-03-37**

To be shared in the same ratio as shown in (a) above.

- (d) **Plot No. 9 Githakwa**

To be shared in the same ratio as in (a) above.

- (e) **Shares in Ngare Ndare**

To go to Samuel Githua Kabanya.

A careful consideration of the above proposals will show that there are few differences in them. The proposals agree in the following assets:

(i) Shares in Ngare Ndare should go to Samuel G. Kabanya.

It is clear that the Objector has introduced the name of Amos Kabanya Mwangi and Francis Wamahiu Mwangi as beneficiaries of a $\frac{1}{4}$ each of the other properties. Apparently the above named persons are nephews to the Objector. There is no doubt that the deceased died leaving behind a widow, daughters and two sons. It would appear none of the daughters is interested to claim for a share of the deceased's Estate. Before the confirmation of grant the deceased's widow and a son namely Suleiman Mwangi died. The late Suleiman Mwangi was survived by a widow namely; Gladys Wamaitha Mwangi, the Protestor herein. In short, the surviving direct beneficiaries of the deceased Estate are: (1) Samuel Githua Kabanya (Objector) and

(2) Gladys Wamaitha Mwangi (representing the Estate of her late husband Suleiman Mwangi, deceased)

In the original petition filed by Naomi Wairimu Kabanya, the deceased's widow, the names of the nephews the Objector has introduced to these proceedings were not included as beneficiaries. With respect, I am persuaded by the submissions of the Protestor that they i.e. Amos Kabanya Mwangi and Francis Wamahiu Mwangi cannot inherit directly but through their respective parents who must have been beneficiaries to the Estate. I find the Protest to be well founded. However, the schedule of distribution proposed by the Protestor is not in conformity with the law. I direct that the grant be confirmed on condition that the Estate be distributed between the Objector and Protestor strictly as stipulated under Section 38 of the Law of Succession Act. Mention on 29th July 2011 to confirm that the aforesaid directive has been complied with.

Each party to meet his or her own costs.

Dated and delivered at Nyeri this 15th day of July 2011.

J. K. SERGON

JUDGE

In open court in the presence of Mr. Ndirangu holding brief for Kiminda for Protestor and Mr. Kingori holding brief A. Kariuki for the Applicant.