



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

FAMILY DIVISION

SUCCESSION CAUSE NO. 1005 OF 2009

IN THE MATTER OF THE ESTATE OF JOHN GATERE GATORU (DECEASED)

SAMUEL MBUGUA GATORU.....
.....APPLICANT

VERSUS

RAYMOND KARANJA GATORU.....
RESPONDENT

R U L I N G

A Grant of Letters of Administration was issued to SAMUEL MBUGUA GATORU and RAYMOND KARANJA KAMAU as Co-Administrators to the Estate of their late brother one JOHN GATERE GATORU in December 2009. The properties involved are 2 parcels of land namely **KIAMBAA KARURI/T.981** which is 0.018 Hectares (roughly ¼ Acre) and **KIAMBAA THIMBIGUA/405** measuring 0.108 Hectares.

They do not seem to have agreed on the mode of distribution and so on 23rd June 2010, one Administrator (Samuel Mbugua) filed the summons for confirmation of the Grant. In his application he proposed that the ¼ plot be transferred to him. He forfeited any claim over the other plot and had it shared equally between the 4 other beneficiaries. The Co-administrator protested and filed an affidavit of protest on his own behalf and that of the other beneficiaries. He deponed that the Karuri T981 Plot had been left to one of his sisters Grace Wambui as a gift inter vivos as a reward for her taking care of the deceased when he was ailing. He and the said sister therefore objected to the transfer of the plot to the 1st Administrator. They nonetheless told the court that they had no problem with the other parcel being shared equally.

The matter therefore proceeded to hearing *viva voce* on the mode of distribution in respect of the ¼ Acre plot.

I heard the parties. It came out clearly that although they are siblings the rest of them do not relate very well with the 1st Administrator. They do not therefore want him to get the ¼ plot alone even if he was ready to forego his entitlement in the other plot. According to the 1st Administrator, the ¼ plot is too small to be subdivided amongst 5 people – and I do agree with him absolutely. The others do not want him to get it and so they want it to go to their sister Grace. They claimed that their late brother who was unmarried, had given it to Grace inter vivos. They nonetheless admitted that there were no other

witnesses when the plot was given to Grace, and nor was it done in writing.

After hearing the parties in court and observing their demeanor it was quite clear that the other siblings did not want the 1st Administrator to end up with the plot and hence the protest. In my considered view there was no sufficient evidence to support the claim that the plot had already been given to Grace by her late brother.

It transpired also from the evidence adduced in court that when their mother died, she had directed that Grace be given a slightly larger portion than the others and that was because she did not have the $\frac{1}{4}$ acre plots that the rest of them have. She was therefore properly compensated. They also testified that she has her own house on her plot but she has refused to move and continues to live in her mother's house in the said plot. She is not therefore destitute and she should move to her own house just like the others have done. I find no reason at all for her to remain with the $\frac{1}{4}$ plot. There is no evidence at all to show that it was given to her by the deceased in his lifetime.

The proposal on distribution by the Applicant herein was in my considered view reasonable as one wonders how a $\frac{1}{4}$ of an acre can be subdivided into 5 portions. Such small pieces cannot be put into any efficacious use. If nonetheless that is what the majority of the beneficiaries want, then let them go ahead and share it equally.

My decision therefore is that all the 5 beneficiaries share both properties equally. I also order that the Grant of Letters of Administration herein is confirmed on the above terms.

A certificate of confirmation to issue to that effect. There shall be no order as to costs as the parties are members of the same family.

W. KARANJA
JUDGE

Delivered, Signed and Dated at Nairobi this 28th day of September, 2011.