



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT NYERI

P & A APPEAL NO. 7 OF 2009

In the matter of the Estate of Margaret Njeri Kariuki (Deceased)

ANNE WAIRIMU NJOROGE.....APPELLANT

VERSUS

JOHN MAGURU NJOROGE.....RESPONDENT

(Being appeal from the Ruling and order of J. Gathuku, Ag Principal Magistrate in Murang'a Senior Principal Magistrate's Succession Cause No. 219 of 2007 delivered on 20th April 2009)

JUDGMENT

This judgment is the outcome of the appeal against the ruling of Hon. J. Gathuku, learned Resident Magistrate delivered on 20th April 2009 vide **Murang'a S.P.M. Succession Cause No. 219 of 2007**. The genesis of the appeal appears to be short and straightforward. Anne Wairimu Njoroge, the Appellant herein, successfully applied for a grant of Letters of Administration intestate in respect of the Estate of Margaret Njeri Kariuki, deceased, before the Murang'a Senior Principal Magistrate's Court Murang'a. She thereafter applied for the grant issued to her on 6th November 2007 to be confirmed vide the summons dated 30th May 2008. John Maguru Njoroge, the Respondent herein, filed an affidavit of Protest to oppose the Summons. The dispute was heard by Hon. J. Gathuku, learned Resident Magistrate. By his ruling delivered on 20th April 2009, the learned Resident Magistrate proceeded to confirm the grant on the terms of the affidavit of Protest. In other words the only asset of the Estate i.e. **L.R. NO. MAKUYU/KIMORORI/BLOCK 1/322** was given to the Respondent. The appellant was aggrieved hence this appeal.

On appeal, the Appellant put forward the following grounds in her Memorandum:

- 1. The learned Resident Magistrate misdirected himself on the law t wit section 39(1) (c) of the Law of Succession Act hence come to the wrong conclusion.***

- 2. The learned Resident Magistrate after finding in evidence that the Appellant was like a mother in-law or aunt in-law to the deceased and hence in reality like a parent, he nevertheless found that a cousin to the deceased who would only claim through his parents had priority over the same parent to claim the property of a step-brother or step-cousin. I so finding the Court by implication found that a child would have a greater priority over another sibling's property over a parent of the said sibling.**
- 3. The learned Resident magistrate came to the wrong conclusion that the suit property L.R. Number Makuyu/Kimorori/Block 1/322 had been bequeathed to the respondent only on the basis that the deceased had allegedly handed over the title to the said land to the respondent despite the absence of either a written or oral will or actual settlement on the property.**
- 4. The learned Resident Magistrate misdirected himself on the law on gifts *inter vivos*.**
- 5. The learned Resident magistrate erred in law in treating the proceedings as testate instead of intestate without a change in the pleadings.**
- 6. The learned Resident Magistrate made an erroneous finding of fact in concluding that the fencing of the suit land by the deceased with assistance by the respondent was evidence that the land had been gifted to the respondent.**
- 7. The learned Resident Magistrate exposed a bias against the appellant in concluding that her evidence was unreliable and lacking in credibility without laying any basis for such a fundamental finding but thus ending up believing only the evidence of the respondent.**

When the appeal came up for hearing, learned counsels appearing in the matter recorded a consent order to have the appeal disposed of by written submissions. In my view this appeal will be determined by a single point of law without considering the merits of the case. The question is whether the Murang'a Senior Principal Magistrate's Court had the pecuniary jurisdiction to hear and determine the cause. It is clear from the pleadings supplied that the value of the asset of the Estate is given at Ksh.200,000/=. Under *Section 48* of the Law of Succession Act, the Magistrate's Courts were allowed to hear and determine Succession matters in respect of Estates whose Estimate value go upto Ksh.100,000. It is obvious the trial Court had no pecuniary jurisdiction to hear the matter. Consequently the appeal is allowed. The proceedings and the order confirming the grant are set aside. The Summons for Confirmation of Grant and the affidavit of Protest are restored. The cause is withdrawn from the Subordinate court and transferred to this court for hearing *denovo*. Since the Appellant was the one who filed the cause before the Subordinate Court, I will deny her costs.

Dated and delivered at Nyeri this 18th day of November 2011.

J. K. SERGON
JUDGE

In open court in the presence of Mr. Kirubi holding brief Mbuthia for the Appellant. No appearance R. M. Kimani for Respondent.