



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NYERI

SUCC NO.624 OF 2008

IN THE MATTER OF THE ESTATE OF THE IBRAHIM GIKARIA NDONGO alias GIKARIA NDUNGU

VERSUS

JAMES MWANGI GIKARIA.....PETITIONER

JUDGMENT

James Mwangi Gikaria the petitioner herein, applied for the grant of letters of administration in respect of the estate of Ibrahim Gikaria Ndong'o alias Gikaria Ndungu, deceased to be confirmed. Lucy Nyawira Gichuhi, the 1st protestor herein filed an affidavit of protest to oppose the summons on her behalf and on behalf of her sibling namely: Rahab Wangenchi Kiragu, Elizabeth Wanjiru Thuni and Simon Theuri Gikaria (the 2nd, 3rd and 4th protestors). The dispute was directed to be determined by affidavit evidence and submissions.

I have considered those submissions plus the affidavit evidence. In his affidavit filed in support of the summons for confirmation of grant the petitioner proposed the estate to be distributed as follows:

1. Land Parcel OTHAYA/KIHUGIRU/30 Approx.7.0 acres be inherited by;

i) JAMES MWANGI GIKARIA - 2.0 ACRES

ii) NAHASHON MAINA GIKARIA - 2.0 ACRES

iii) STEPHEN NGATIA GIKARIA - 2.0 ACRES

iv) SERAH WANGARI GIKARIA - 1.0 ACRE JOINTLY

v) **ROSE WACHINGA GIKARIA**

2. **Land Parcel OTHAYA/KIANDEMI/965 approx.2.2 acres be inherited by; DUNCAN KARIUKI GIKARIA.**

3. **Monies held by the public trustee, Nyeri branch and proceeds from sale of shares held in Makindu, Mahoti and Jumapili Farmers cooperative society Limited be shared equally among;**

a) **LUCY NYAWIRA GICHUKI**

b) **LYDIA WANGECHI KIRAGU**

c) **ELIZABETH WANJIRU THUNI**

d) **JAMES MWANGI GIKARIA**

e) **RAHAB NJOKI GITHINJI**

f) **LYDIA WANGECHI NGATIA**

g) **ELIZABETH WAITHIRA ONYIEGO**

h) **DUNCAN KARIUKI GIKARIA**

i) **MARY WANGUI NJAGI**

j) **NAHASHON MAINA GIKARIA**

k) **SERAH WANGARI GIKARIA**

l) **STEPHEN NGATIA GIKARIA**

m) **ROSE WACHINGA GIKARIA**

The protestors were unhappy with the proposal claiming the same was unjust, inequitable and disinherits them. The protestors informed this court that the deceased was married to two wives namely Esther Wairimu Gikaria and Prisca Nyaguthi who are both deceased. They enumerated the composition of each house as follows;

1st house – Esther Wairimu Gikaria

· **LUCY WAIRIMU GIKARIA**

- **RAHAB WANGECHI**
- **ELIZABETH WANJIRU THUNI**

- **NAOMI NJOKI (deceased) (represented by SIMON THEURI GIKARIA)**

2nd house – Prisca Nyaguthii

- **JAMES MWANGI GIKARIA**
- **LYDIA WANGECHI KIRAGU**

- **RAHAB NJOKI GITHINJI**
- **LYDIA WANGECHI NGATIA**

- **ELIZAETH WAITHERA ONYIEGO**
- **DUNCAN KARIUKI GIKARIA**

- **MARY WANGUI NJAGI**
- **NAHASHON MAINA GIKARIA**

- **SERAH WANGARI GIKARIA**

- **STEPHEN NGATIA GIKARIA**

- **ROSE WACHINGA GIKARIA**

The protestors proposed that the estate be shared equally between the two houses.

In response the petitioner opposed the proposal by the protesters. He pointed out that the 4th protestor, simon Theuri Gikaria had been given by the deceased L.R. No.OTHAYA/KIANDEMI/966 and plot No.1413 Uruku, Laikipia.

The petitioner further stated that the 1st, 2nd and 3rd protestor were happily married and settled with their

husbands hence the deceased did not intend and indeed did not provide them with land. It is said the deceased was mindful of the unmarried daughters and that is why he gave two of them 1 acre jointly.

I have carefully considered the affidavit evidence and the rival submissions. From the evidence, it is clear in my mind that the deceased during his lifetime sufficiently provided for Simon Theuri Gikaria, the 4th protestor. He has not denied the fact that the deceased gave him;

(i) LR NO. OTHAYA/KIANDEMI/966 and

(ii) URUKU PLOT NO.1413 IN LAIKIPIA

In my humble, the 4th does not deserve to be given another share of the deceased's estate. I am also convinced that the deceased desired to provide land for his sons and unmarried daughters. There is clear evidence that he provided each son 2 acres and the unmarried daughters 1.0 acres. The deceased did not intend to provide land for married daughters who were happily living with their husbands. There is clear evidence that the deceased during his lifetime appear to have shown his some and two of his unmarried daughters their portions of land to develop. This court does not intend to interfere with the wishes of the deceased in order to foster family harmony. I think the protest should be dismissed which I hereby order. I adopt the mode of distribution proposed by the petitioner as a true reflection of the deceased's wishes. Consequently, the grant is confirmed as proposed in the summons for confirmation of grant.

Dated and delivered this 18th day of November 2011.

J.K. SERGON

JUDGE

In open court in the presence of Mr. Kingori for the Protestor. No appearance for Miss Mwai for Petitioner.