



REPUBLIC OF KENYA

IN THE HIGH COURT

AT EMBU

SUCCESSION NO.99 OF 2005

IN THE MATTER OF THE ESTATE OF:

SAMUEL NJERU WILLIAM	DECEASED
	AND	
REBECCA N. P. NJERU	PETITIONER
	VRS	
WILLIAMSON NAMU NJERU	PROTESTER

RULING

The deceased Samuel Njeru William died on 11/6/2003. He left two widows: Rebecca N. P. Njeru and Nancy Wambui. Rebecca constituted the first house whose children are Peter Mugendi Samuel, Sarah Wanja and Jane Ann Wanjiru. Nancy constituted the second house and her children are Williamson Nyamu Njeru, Stephen Kariuki Njeru and Nicera Marigu Njeru. On 1/12/2004 joint letters of administration intestate were issued to Rebecca and her son Peter Mugendi Samuel. When they applied for confirmation of the letters, Nancy Wambui and her son Stephen Kariuki Njeru each filed an affidavit of protest. Directions were eventually given that the parties would give *viva voce* evidence. The matter was heard by Justice Khaminwa who delivered a ruling on 10/9/2009.

The court found that the deceased had died intestate leaving parcels nos.Kagaari/Weru/4940, Kagaari/Kigaa/1989 and Kagaari/Kigaa/1984. It gave 4940 to Nancy Wambui to share with her children and 1989 to Rebecca Njeru to share with her children. The court was unable to share out 1984 because its size was not known. Nancy Wambui was ordered to provide the size following which the parcel could be shared out in accordance with section 40 of the Law of Succession Act Cap.160, The court then indicated as follows:

“In view of the above, the application, confirmation and affidavits supporting application is hereby invalidated and it is ordered that a fresh application for confirmation be made within the next 30 days.”

On 1/12/2009 Peter Mugendi Samuel filed this application for confirmation in which he proposed that 1989 be registered in trust for the first house and 4940 be held in trust for the second house. He went on to propose that any other property owned by the deceased be equally shared by the two houses. Williamson Namu Njeru protested saying that his mother, the objector, had died on 16/7/2008. He stated that parcel 4940 that had been given to their house measured only 1.5 acres whereas 1989 given to the first house measured about 8 acres. He was dissatisfied with this distribution.

I agree with the submissions by Mr. Maina Nyangena for the Petitioners that the ruling by Justice Khaminwa settled the issue regarding the property that formed part of the estate and how that property was going to be distributed. What withheld the distribution of 1984 was only the ascertainment of its size. This fresh application for confirmation was intended, I believe, to ascertain the size of 1984 to

enable the distribution under section 40. The issues about the mode of distribution cannot be re-opened in the manner suggested by Williamson. He would have to appeal the decision of Justice Khaminwa or seek its review.

However, the fact that Nancy Wambui has since died is material. This application cannot proceed without her estate being represented as she was a party to the proceedings. Under sections 79 and 82 of the Act a personal representative of her estate should be appointed to protect her claim to the estate. The consequence is that this application for confirmation is adjourned to await the appointment of such representative. Costs will abide the application.

Dated and signed at Bungoma on this 17th day of October, 2011.

O. MUCHELULE
JUDGE

Signed and delivered at Embu on this 15TH day of November 2011.

ONG'UDI
JUDGE