



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT NYERI

Succession Cause 239 of 2003

IN THE MATTER OF ESTATE OF JULIETA NJOKI KARIUKI ..DCD

FRANCIS KARIUKI GIKUHI PETITIONER

VERSUS

VERONICA WANJUGU KARIUKI

MARY WANJIRA NJAGI.....PROTESTORS

RULING

The petitioner herein, Francis Kariuki Gikuhi, was granted letters of administration intestate in respect of the estate of Julieta Njoki Kariuki, deceased on 13th March 2008. He then applied via the summons for confirmation of grant dated 13th September 2008 to have the grant confirmed. Veronica Wanjugu Kariuki and Mary Wanjira Njagi the protestors herein, filed an affidavit of protest sworn by Veronica Kariuki to oppose the application for confirmation of grant. When the matter came up for hearing it was directed that the same be determined by affidavit evidence and by written submissions. At the time of writing this ruling, only the protestors had their submissions.

I have taken into account the summons for confirmation of grant and the facts deponed in the affidavit of protest and that filed in support. I have also taken into account the protestors' written submissions. In the summons for confirmation of grant the petitioner names himself, Veronica Wanjugu Kariuki and Mary Wanjira Njagi as persons surviving the deceased as a grandson, daughter and daughter-in-law respectively. He also identified the parcel of land known as L.R. No. Chinga/Gikigie/19 as the estate's only asset. He intimated in the schedule of distribution to have the aforesaid land solely given to him to the exclusion of other beneficiary. In the affidavit of protest the protestors pointed out that the aforesaid parcel of land no longer exists since the same was subdivided giving rise to the following subdivisions.

- (i) *Chinga/Gikigie/1189,*
- (ii) *Chinga/Gikigie/1190, and*
- (iii) *Chinga/Gikigie/1191,*

It is stated that parcels numbers Chinga/Gikigie/1191 and Chinga/Gikigie/1190, were registered in the names Veronica Wanjugu Kariuki and Mary Wanjira Njagi respectively. The protestors are of the view that the petitioner has no right to inherit the land. They are of the view

that the parcel of land known as Chinga/Gikigie/1189 should be shared equally between the protestors. There is no doubt that petitioner is a grandson to the deceased. The protestors stand in priority to inherit the estate as against the petitioner under section 39 of the law of succession Act. I find the protest to have merit in that the parcel of land known as L.R. Chinga/Gikigie/19 no longer exists. It is also obvious that the petitioner disinherited the protestors from benefiting from the deceased's net estate yet they rank on priority against him. I hereby refuse to confirm the grant as proposed. I have been provoked to make an order to distribute the estate. I think it is the right thing to do at this stage in order to avoid the matter procrastinating further. I hereby order that the grant be issued and confirmed in the joint names of the protestors in place of the petitioner and that the parcel of land known as Chinga/Gikigie/1189 be shared equally between them. Each party to bear her own costs.

Dated and delivered this 31st day of March 2010.

J.K. SERGON

JUDGE

In open court in the presence of Miss Keli h/b Wahome for the Petitioner and Mr. Ng'ang'a for the Protestors.

J.K. SERGON

JUDGE