

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MERU

Succession Cause 5 of 1996

IN THE MATTER OF THE ESTATE OF MUSA M'MARETE M'RINGERA (DECEASED)

JOSEPH MBAABU MARETE APPLICANT

VERSUS

MARGRATE NYOROKA M'MARETE 1ST OBJECTOR
PAUL KITHINJI MARETE 2ND OBJECTOR

RULING

Although this matter was coming up for judgment for reasons that I shall explain, I declined to do the judgment. Joseph Mbaabu Marete petitioned for letters of administration intestate on 14th January 1995. In the petition, he described himself as the son of the deceased. He listed the surviving beneficiaries as 12 siblings and 2 widows. There is however now only one widow surviving. Although in his petition he only mentioned one property it has later transpired after the filing the objections and affidavits that the deceased estate is very extensive. It transpired that the deceased had many parcels of land, tea bushes and bank accounts. It is not clear whether the failure to set out the correct properties owned by the deceased was by error or by design. This matter, when it appeared before Justice Emukule was ordered to be heard by way of written submissions and affidavits on distribution. The parties filed their affidavits suggesting various mode of distributions and their advocates filed submissions. As stated before, the deceased estate is very extensive. It transpired also in some of those affidavits that there is possibility that the deceased left an oral will. In view of the divergent suggestions on distribution in view of intimation that there possibly was an oral will, I have found it very very difficult to be able to reach a decision on how the beneficiaries should share the deceased estate. I am of the view that it is necessary for parties to give oral evidence in order to acquaint the court on the reasons behind their suggested mode of distribution. It is such evidence that will assist the court to know even where some of the beneficiaries are already settled to aid the court to reach a just decision. It is for that reason that I hereby set aside the order that this matter be heard by way of written submissions and affidavit. I now direct that this matter be fixed for hearing by viva voce evidence at a date that will be fixed at the reading of this ruling.

Dated and delivered at Meru this 12th day of March 2010.

MARY KASANGO
JUDGE