



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NYERI
Succession Cause 158 of 2003
[IN THE MATTER OF THE ESTATE OF HARRISON MAINA KAMOTHO]
AND

MARGARET KAGURE MAINA..... APPLICANT

VERSUS

- 1. CHARLES KAMOTHO MAINA)**
- 2. JACOB KINYUA MAINA)..... PROTESTORS**

JUDGMENT

Letters of administration intestate in respect of the estate of Harrison Maina Kamotho, deceased, were granted to Margaret Kagure Maina on 18th February 2008. **Margaret Kagure Maina**, the Applicant herein, applied for the grant to be confirmed in the summons for confirmation of grant dated 7th October 2008. **Charles Kamotho Maina** and **Jacob Kinyua Maina**, hereinafter referred as the 1st and 2nd protestors each filed an affidavit of protest to oppose the confirmation of grant. The protests and the summons for confirmation of grant were directed to be determined by oral evidence.

The protestors' case is supported by evidence of two witnesses. Charles Kamotho Maina the 1st protestor informed this court that the deceased was married to two wives namely Beatrice Wairimu Maina and Margaret Kagure Maina. Beatrice Wairimu Maina had two sons namely Charles Kamotho Maina and Jacob Kinyua Maina. While Margaret Kagure Maina had three sons namely Wilson Kamotho Maina, Geoffrey Mathenge Maina and Samuel Gichaga Maina. It is the evidence of PW 1 that the deceased shared out his properties during his life time save for the following properties;-

Nyeri/Endarasha/1276 measuring 10 acres and LR No. **Nyeri/Endarasha/1792 – 1828** measuring 70 acres. It is the evidence of PW 1 that the deceased did not give land to Jacob Kinyua Maina. He asked this court to have the remaining pieces of land shared equally amongst the five sons with Margaret Kagure Maina having a life interest. On cross examination PW 1 admits that the deceased subdivided and sold part of the land to finance subdivisions. There is no dispute that the parcel of land known as **Nyeri/Ngarengiro/99** was given to Samuel Gichaga Kamotho and Francis Warui Kamotho. Wilson Kamotho (PW 2), confirmed that the deceased showed each of his sons a portion of the land measuring 10 acres to put up a house. He also confirms that the 2nd protestor Jacob Kinyua Maina, was not shown any land. He told this court that the remaining land should be shared equally between the five sons leaving a portion for Margaret Kagure Maina as a life interest. He conceded that there was a family meeting held in 1992 where the deceased distributed his land. He said that he does not intend to dispute the mode of distribution.

The applicants' case was also supported by the evidence of two witnesses. Margaret Kagure Maina was the first to testify. She said she distributed the deceased estate according to the wishes of the deceased. She claims that the 2nd protestor was given land in Naromoru which

was registered in the name of his mother Beatrice Wairimu Maina hence he was not left out by the deceased. She claimed the deceased left the remaining portion of his land to her to hold in trust for the family hence the same should not be shared out. Francis Warui Kamotho (PW 2) a brother of the deceased confirmed that he and his brother Samuel Gichaga Kamotho were given LR No. **Nyeri/Ngarengiro/99**. He also confirmed that he witnessed the deceased distribute his land. He said Beatrice Wairimu Maina was given the parcel of land in Naromoru while the other land was given to Margaret Kagure Maina. PW 2 averred that Jacob Kinyua Maina was to inherit the land at Naromoru held by Beatrice Wairimu Maina.

At the end of the evidence learned counsel were given leave to file written submissions. I have considered the evidence and the submissions. The main issue in dispute is whether the deceased shared out his property during his life time and what should happen to the remaining. Both sides are in agreement that the deceased distributed his properties to his sons during his life time. According to the applicant the 2nd protestor should inherit the parcel of land in Naromoru registered in the name of his mother. The 2nd protestor did not give evidence to dispute those allegations. The applicant was of the view that she was given plot LR No. **Nyeri/Endarasha/1276** where she resides. Parcels no **Nyeri/Endarasha/1792 to 1828** were left for her to cater for family emergencies. On the other hand the protestors are of the view that the deceased did not give land to Jacob Kinyua Maina and that he left undistributed LR **Nyeri/Endarasha/1276** and **Nyeri/Endarasha/1792 - 1828** and the applicant is entitled to a life interest. Having considered both evidence and the submissions, I am convinced that the deceased shared out his property during his life time save for:-

1. **Nyeri/Endarasha/1276**
- and
2. **Nyeri/Endarasha/1792 – 1828**

The applicant admits that she holds the parcel of land known as **Nyeri/Endarasha/1792 – 1828** in trust for the family and that LR No. **Nyeri/Endarasha/1276 was given to her by the deceased**. I am satisfied the aforesaid properties are available for distribution. I hereby direct that the same be shared according to the houses in terms of the provisions of section 40 Law of Succession Act. I am also convinced that Jacob Kinyua Maina was given land in Naromoru. Consequently I find the protest to be with merit. Let either party file a further affidavit indicating the schedule of distribution in accordance with this ruling before the grant can be confirmed. Each party to meet his or her own cost.

Dated and delivered at Nyeri this 16th day of April 2010.

J.K. SERGON

JUDGE