



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT**  
**AT NYERI**

**SUCCESSION CAUSE 81 OF 2008**

**IN THE MATTER OF THE ESTATE OF C.K.B ALIAS C. K.B.. – DECEASED**

**S.M.K.....APPLICANT**

**VERSUS**

**E.W.K.....PROTESTOR**

**JUDGMENT**

**E.W.K** and **S.M.K** were given Letters of Administration intestate in respect of the estate of C.K. K.B alias C. K.B deceased on 7<sup>th</sup> May 2008. **S.M.K** filed a summons for confirmation of grant dated 5<sup>th</sup> December 2008 in which she sought for the grant to be confirmed. **E.W.K** opposed the summons for confirmation of grant by filing an affidavit of protest. This court gave directions for the protest and the summons for confirmation of grant to be determined by oral evidence.

In support of her case, **E.W.K**, hereinafter referred to as the Protestor, told this court that she got married to the deceased in 1985. By then the deceased was a widower with two children namely **S. M.K** and **A.M.K**. She said she moved to cohabit with the deceased whereupon she took care of the aforesaid minors. Before he died, the deceased owned two parcels of land namely **AGUTHI/GATITU/2270** and **AGUTHI/GATITU/1071**. She got married to the deceased while she had three children of her own whom the deceased adopted as his children. Their marriage was blessed with three other children. She said the family met to discuss the way the deceased estate should be distributed. She was of the view that the property of the aforesaid Estate be distributed amongst the nine units, that is, herself plus her 6 children on one part and the Applicant and her sister, **A.M.K** on the other part. The Protestor was settled on Plot No. **AGUTHI/GATITU/2270** while **AGUTHI/GATITU/1071** was left vacant. **S.M.K**, hereinafter referred to as the Applicant, testified and tendered the evidence of two other witnesses in support of her case. She confirmed that the deceased owned two parcels of land as stated by the Protestor, that is, **AGUTHI/GATITU/2270** and **AGUTHI/GATITU/1071**. She told this court that the clan sat and agreed to let the protestor and her children to inherit Plot No. **AGUTHI/GATITU/2270** and to allowed her and her sister to inherit Plot No. **AGUTHI/GATITU/1071**. According to her, the land should be shared according to the houses. The first house is comprised, of **A. W.K** and **A.M.K** while the second house comprised of **E.W.K** and her six children. According to **K.G, D. W. 2**, a brother to the deceased, **L.R. NO. AGUTHI/GATITU/1071** was given to the children of **A.W.K** and **L.R. NO. AGUTHI/GATITU/2270** was given to **E.W.K**. **D. W. 2** produced the family minutes of a meeting held on 1<sup>st</sup> October 2007, which meeting was not attended by the protestor, as she had not been invited. According to **D.W. 2** the property should be shared according to the houses. **Joseph Ngugi Michuki, (P.W. 3)**, the area assistant chief, the clan elders were requested to arbitrate over the dispute of distribution of the estate. He produced minutes of a meeting showing that the Plot No. **AGUTHI/GATITU/1071** was given to the first house, that is the house of **A.W.K** and the **AGUTHI/GATITU/2270** was given to the house of **E.W.K** where the family house was put up. At the end of the evidence, learned counsels appearing in this dispute were granted leave to file written submissions which they did.

I have considered the evidence and submissions. There is no dispute that the estate assets available for distribution were namely:

1. **AGUTHI/GATITU/2270** and
2. **AGUTHI/GATITU/1071**

There is also no dispute that the deceased was married to **A.W.K**, deceased and had two children namely: **S.M.K** and **A.M.K**. The deceased

got married to E.W.K upon the demise of A.W.K. At the time of that marriage Esther had three (3) children whom the deceased adopted. The dispute before this court now is over the distribution of the estate. According to the Applicant, the Applicant and the protestor are in agreement that the property should be shared according to the houses. The issue in dispute is over ratio. The Applicant is of the view that the property should be shared according to the houses in equal measure. The Protestor is of the view that it should be shared between the houses taking into account the units in each house. In my view this dispute falls squarely within *Section 40* of the Law of Succession Act. *Section 40* of the Law of Succession Act states as follows:

***“1. S.40(1) where an intestate has married more than once under any system of the law permitting polygamy his personal or household effects and the residue of the net intestate estate shall in the first instance be divided among the houses according to the number of children in each house but also adding anyone surviving him as an additional unit to the number of children.”***

In this case the first house had two units, that is, S. M.K and A.M.K. Second house had seven (7) units that is E.W.K, C. W. K, E.N.K, R.N.K, B.M.K, S.M.K and F.M.K. In accordance with *Section 40* therefore, the first house should get 2/9 of the estate assets and the second house to get 7/9 of the estate assets. Consequently the grant is confirmed. The ratio of distribution be reflected as aforesaid. Since the dispute involves close family members, I direct that each family member meets his or her own costs.

***Dated and delivered at Nyeri this 16<sup>th</sup> day of April 2010.***

**J. K. SERGON**

**JUDGE**