



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT MERU

Succession Cause 195 of 1994

NAFTALY GIKUNDI ANAMPIU PETITIONER

VERSUS

JOYCE NGUTA M'ANAMPIU APPLICANT/OBJECTOR

JUDGMENT

The deceased is today survived by 3 beneficiaries. Those are two daughters, Joyce Nguta M'Anampiu and Lilian Kathuri and one son Naftaly Gikundi Anampiu. The estate consists of parcels numbers *Kiirua/Naari/143, Ntima/Ntakira/306 and Kiirua/Nkando/1125*. Naftaly had previously in this cause obtained a grant and confirmed it by distributing the whole estate into his own name to the exclusion of the other beneficiaries. It was stated by Joyce that Naftaly in petitioning for grant did so secretly without their knowledge. That on obtaining confirmation of the grant, Naftaly transferred all the deceased properties into his name. The grant that was issued to Naftaly was revoked by this court and a fresh grant was issued jointly in the name of Naftaly and Joyce on 25th May 2009. Both those two administrators applied individually for confirmation of that grant. As a result of the divergent mode of distribution this court ordered for the issue of distribution to be heard by way of *viva voce* evidence. Joyce point of view is that all the children of the deceased are entitled to inherit from the deceased estate. She stated that Lilian was married but her husband died during the subsistence of this cause. Joyce in her evidence said that she and Lilian should have some of the property of their deceased father. In evidence, Naftaly said that Lilian had inherited substantial property from her deceased husband and is not interested in this estate. He suggested that only Joyce should get two acres of parcel number 143 for her lifetime and thereafter the same to revert to him. The reason why he suggested that mode of distribution was because Joyce only had one daughter who is now married and lives with her husband. He said that if Joyce if given any land absolutely, she intended to sell the same. This he said was because she had another parcel of land which she purchased from money given to her by their deceased father. Naftaly was however not able to prove that their deceased father bought land for Joyce. I have considered the evidence adduced in the party's affidavits and the evidence on record and their submissions. It should be noted that Lilian did not come to court to claim her interest in this estate. It may therefore be that if she is given land on this estate it will either be used by Joyce or Naftaly. Further, even though Section 38 of the Law of Succession Act provides that children of the deceased should share the net estate of the deceased equally, I believe that the court can consider circumstances of each party in deciding what share should be given to each child. It ought to be considered that sometimes it is also uneconomical to share the deceased property equally. Naftaly stated in evidence and it was uncontroverted that he has many children who have themselves settled on the deceased land. Considering the evidence before me, and doing the best that I can do, I order that the grant be

confirmed as follows:-

1. *Joyce Nguta M'Anampiu to get 5 acres of L.R. No. Kiirua/Naari/143 absolutely.*
2. *Naftaly Gikundi Anampiu to get the balance of L.R. No. Kiirua/Naari/143 absolutely.*
3. *In order to effect number 1 and 2 above, the land registrar is ordered to cancel the registration of Naftaly Gikundi Anampiu and to register new titles as per number 1 and 2 above. In that regard, leave is hereby granted for the land registrar to dispense with the necessity of having the original title document of Kiirua/Naari/143.*
4. *Naftaly Gikundi Anampiu to get L.R. No. Kiirua/Nkando/1125 absolutely.*
5. *Parcel number Ntima/Ntakira/306 to be shared equally between Naftaly and M'Imanene M'Rutere.*
6. *If any of the administrators of this succession fail to execute the necessary documents to enable this judgment to be put into effect this court grants leave to the Deputy Registrar of this court to sign all such necessary documents.*
7. *There shall be no orders as to costs.*

Dated and delivered at Meru this 28th day of May 2010.

MARY KASANGO
JUDGE