



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

**Civil Appeal 35 of 2008**

**ELENAH MUEKE JOHN.....APPELLANT**

**VERSUS**

**JOSEPH MUTISO MACIRA.....RESPONDENT**

**J U D G M E N T**

The appellant herein was the petitioner in **Runyenjes Succession Cause No. 6 of 2007**. The Respondent filed an affidavit of protest on the issue of the mode of distribution of the estate. The matter proceeded to hearing by way of viva voce evidence.

In her affidavit in support of the application for confirmation of the grant, the appellant had proposed that plot No. **KAGAARI/KIGAA/1957** which is 8 acres should be subdivided into 2 equal parts with each part being transferred to each house of the deceased for distribution to the members of that house. The deceased had 2 houses. The petitioner is the only surviving spouse. The protestor was representing his house. From the affidavit and proceedings, I note that the houses have an equal number of dependants i.e 8 in each house. This would mean that if the petitioner's proposal was accepted, the distribution would not favour any house.

I have looked at the mode of distribution proposed by the protestor herein which appears to have been largely adopted by the learned trial Magistrate. The said distribution gives Joseph Mutiso, Robert Muthini and Rose Muchira who all come from the same house 2 acres and 1.5 acres each i.e an aggregate of 5.5 acres. All the others were supposed to share the remaining 2.5 acres. In my considered view, this mode of distribution was not justified and was contrary to the provisions of Section 40 of the Law of Succession Act. For this reason, I will allow this appeal and set aside the Judgment dated 27/2/2008. **Plot No. KAGAARI/KIGAA/1957** will be subdivided into 2 equal portions. Each house to get 4 acres of the same. 1<sup>st</sup> house's share be transferred to the petitioner who will then share it equally among her children while the other share will be registered in the name of the protestor Joseph Mutiso Muchira to distribute equally amongst his siblings. The money at Aembu Farmers Co-operative Society be shared equally between the petitioner and the protestor to utilize for demarcation of the said plots.

Each party will bear its own costs of this appeal.

**W. KARANJA**

**JUDGE**

Delivered, signed and dated at Embu this 12th day of May 2010

**In presence of:- Mr. Ithiga for Appellant and Respondent in person.**