



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MERU
Succession Cause 154 of 1998**

**CHARLES KINOTI M'MUKINDIA APPLICANT
VERSUS
GEORGE KITHINJI MUKINDIA & OTH RESPONDENTS
JUDGMENT**

A confirmed grant dated 31st July 2003 distributed parcel number *Ntima/igoki/1327* as follows:-

1. *Gakii M'Mukindia M'Arachi* $\frac{1}{4}$ share during her lifetime
2. *Charles Kinoti M'Mukindia*]
3. *George Kithinji M'Mukindia*] 3 equal portions to be registered in common
4. *Gerald Muthaura M'Mukindia*]

As can be seen, a quarter share of the property was given to Gakii M'Mukindia M'Arachi. Gakii was the wife of the deceased. It was given for her lifetime. The balance was shared equally between her sons. Before titles were issued to the respective beneficiaries, the administrator, Gakii, died. This prompted the court to issue fresh grant in the joint names of George Kithinji M'Mukindia and Charles Kinoti. The remaining beneficiaries are unable to agree on how the life interest of Gakii should be divided. Charles Kinoti in his submissions stated that the quarter share of their mother's portion should be divided equally amongst her 3 sons. In support of that submissions, he quoted section 35(5) of the Law of Succession Act. That Section is in the following terms:-

“35. (5) Subject to the provisions of sections 41 and 42 and subject to any appointment or award made under this section, the whole residue of the net interstate estate shall on the death, or, in the case of a widow, re-marriage, of the surviving spouse, devolve upon the surviving child, if there be only one, or be equally divided among the surviving children.”

George Kithinji opposed the mode of distribution suggested by Charles. He stated that their mother in her lifetime had sold the portion to Dorothy Kooru Kaaria. To this end, he annexed an agreement of the same between Gakii and Dorothy dated 11th February 2003. It is pertinent to note that Gakii agreed to sell land to Dorothy before the grant was confirmed. Not only was that an act of intermeddling with the deceased estate as per section 45(1) of the Succession act but Gakii clearly had no power to purport to sell the deceased estate. She was prohibited by Section 45(1) which prohibits the distribution of capital asset of the estate of the deceased. That section provides as follows:-

“Except so far as expressly authorized by this Act, or by any other written law, or by a grant of representation under this Act, no person shall, for any purpose, take possession or dispose of, or otherwise, intermeddle with, any tree property of the deceased.”

The purported sale of land to Dorothy was null and void. It was submitted by George Kithinji that Gakii in her lifetime did not desire for Charles Kinoti to have a share of her life interest. It was further submitted that she formed that opinion because it was only George Kithinji and Gerald Muthaura who took care of her while she was alive. It ought to however be remembered that what Gakii held was a life interest of a quarter share of the deceased estate. The term life interest is a concept used to designate the ownership of land for duration of a person's life in this case Gakii the life tenant. It is an estate in real property that ends at death. Gakii had the right to enjoy quarter share of

the land for her lifetime. She could not in law leave her interest to heirs or a purchaser. At death, her life interest became extinguished and had there been a remainder man, that share would have gone to him. When the grant was confirmed, the court failed to appoint a remainder man who would inherit Gakii's life interest. In considering what should happen to Gakii's life interest, I shall be guided by Section 35(5). Accordingly, this is the judgment of the court.

1. ***I order a grant be confirmed to the effect that Ntimaligoki/1327 be shared out equally between Charles Kinoti M'Mukindia George Kithinji M'Mukindia Gerald Muthaura M'Mukindia.***
2. ***There shall be no orders as to costs.***

Dated and delivered at Meru this 7th day of May 2010.

MARY KASANGO
JUDGE