



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

Succession Cause 486 of 2004

IN THE MATTER OF THE ESTATE OF MONICAH MUTHONI NJOROGE (DECEASED)

RULING

On 30th August 1996 David Wainaina Njoroge (the petitioner) obtained a grant of letters of administration to the estate of his late mother, Monica Muthoni Njoroge (the deceased). He thereafter applied for confirmation of that grant and when the matter came up for hearing before me on 10th November 2008, Miriam Nyambura Kamau (the objector), a widow of the deceased's son, objected to the confirmation contending that the administrator and her late husband's other siblings were intent on denying her, her late husband's share of the deceased's land known as **Title No. Nyandarua Njambini/1217**. In the circumstances I directed that the objection be heard by viva voce evidence which has been done.

In her testimony the objector stated that she opposes the proposed distribution which would leave her with only 1.2 acres of the deceased's land as unfair to her. In her view being a widow of a son of the deceased, like the other sons of the deceased, she is entitled to an equal share of the deceased's land.

In cross examination by the other beneficiaries of the deceased's estate she denied that before her late husband died, he had sold one acre of his share of the deceased's land. She said although she was not there at the time of the sale the information she has is that, prior to her death, the deceased sold 4 acres of her land, paid off the loan on the land and shared out the balance of the proceeds of sale equally among her children. She disowned **Ex.D1** which contains an alleged consent on the distribution of the deceased's estate and claimed that she signed it under duress.

The objector called her brother Pastor Geoffrey Kaburia Kamau, PW2, whose testimony was based on what his brother-in-law, the objector's late husband, told him. He claimed that before his death his deceased brother-in-law had told him that in 1985, prior to marrying his sister in 1987 he had only sold one quarter of an acre of his share of his mother's land which was his extra entitlement as the eldest son of the deceased. He also claimed that his later brother-in-law told him the deceased had sold 4 acres of her land, paid off SFT loan and shared out the balance among her children. It was with his share of the proceeds of that sale that he paid dowry for his sister.

On his part the petitioner who testified on his behalf and on behalf of his other siblings said that although his late father told them that his land comprised of 15 acres, the Title Deed in his mother's name shows that it is only 9.1 acres. Out of that the deceased sold 3 acres prior to her death and her late brother, the objector's deceased husband sold 1 acre of his share. He said he has agreed with his other siblings to share out the remaining piece of land as follows:-

- | | | | | | |
|----|----------|----------|---|------|-------|
| 1. | David | Wainaina | – | 2.15 | acres |
| 2. | Margaret | Wanjiru | – | 1.50 | acres |
| 3. | Naom | Njoki | – | 1.50 | acres |
| 4. | Timoth | Kanyeki | – | 2.1 | acres |
5. Mirriam Nyambura (the objector) – 1.2 acres.

He said prior to his application for confirmation of the grant they had given the above proposal to the area chief who recorded it and they all including the objector signed it. He is surprised that the objector is now recanting it. He produced as **Ex.D1** the agreement signed before the chief. He said they are giving their late brother's widow (the objector) 1.2 acres because their late brother had sold 1 acre out of his share. In cross examination he was categorical that his late brother sold 1 acre of his share and that it was from the proceeds of that sale is that he paid dowry for the objector.

I have considered this evidence. The Objector's brother, PW2's testimony about what he was told by his late brother-in-law is hearsay evidence and therefore inadmissible and worthless.

The objector's late husband is said to have sold 1 acre of his share of the deceased's land before marrying the objector. She could of course not know of that fact unless she was told but she denies her late husband told her anything of the kind. Whether she was told or not, having considered the matter I believe the evidence of the petitioner. There is no reason why the entire family would have wanted to give the objector a small share than what the other sons of the deceased were entitled to. I find that, out of her own free will, the objector signed the letter, **Ex.D1**, before the chief and she has only changed her mind in court.

The certificate of official search gives the acreage of the deceased's piece of land as 4.38 hectares which, at 2.4691 acres per hectare, works out to 10.8146 acres while the distribution proposed by the petitioner works out to 8.45 acres. That leaves 2.3646 acres undistributed. Sharing the extra 2.3646 acres by the above agreed proportions, each of the beneficiaries will get the following acreage:-

- | | | | | | |
|----|-----------------|-------------------|--|--------------|--------------|
| 1. | David | Wainaina – | | 2.735 | acres |
| 2. | Margaret | Wanjiru – | | 1.908 | acres |
| 3. | Naom | Njoki – | | 1.908 | acres |
| 4. | Timoth | Kanyeki – | | 2.687 | acres |
5. **Mirriam Nyambura (the objector) – 1.526 acres.**

I direct that the deceased's piece of land be surveyed and shared out in approximately these proportions after of course taking into account the access roads. The beneficiaries shall share the survey fees proportionately and each shall pay the charges for obtaining the title deed for his or her portion. This being a family matter each shall bear his or her own costs of this cause.

SIGNED, DATED and DELIVERED at Nakuru this 9th day of June, 2010.

D. K. MARAGA

JUDGE.