



REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA

AT EMBU

Succession Cause 117 of 2008

**NAMU MUNANO.....DECEASED**

**VERSUS**

**MBAKA NAMU.....PETITIONER**

**R U L I N G**

The petitioner herein is approximately 90 years old as per the chief's letter dated 23/1/08. She was granted the letters of administration to the estate of her late husband by this court on 13/5/08 amidst protest by her son one Perminus Njiru Namu.

She filed her application for confirmation of the said Grant on 31/3/09 and indicated her intended mode of distribution of the 2 parcels of land left by her husband as follows:

- (a) **KAGAARI/KIGAA/693** measuring 2.89 Acres to be distributed as follows:
- (i) PERIS MBIRO NAMU 1.89 Acres
  - (ii) MBAKA NAMU (Petitioner) 1 Acre
- (b) **KAGAARI/KIGAA/359** measuring 4.70 Acres to be distributed as follows:
- (i) PERMINUS NJIRU NAMU - 2 Acres
  - (ii) JANE IGANDU NYAGA - 1.35 Acres

(iii) EDITH THAARA MURANO - 1.35 Acres

Perminus Njiru Namu the only son in the family objected to the mode of distribution. This court asked him to file his affidavit of protest within 14 days giving his own schedule of his preferred mode of distribution. He filed the affidavit dated 5/3/2010 but he did not make any proposals on the mode of distribution. His contention is that his late father left an oral will in which he gave the parcels of land to him with directions that he gives his sister a portion of the land the size of which he did not state. He claims that his elderly mother is being misled by his sisters.

When the application came up for hearing on 29/4/2010, Perminus did not appear. Counsel for the petitioner asked the court to decide the matter on the strength of the affidavits filed.

I have considered these affidavits. The protestor (if I may call him so) wants to be given the parcels of land and then he can give whatever he wants to one sister who he did not name. He appears to be irked or upset by the fact that some of his sisters are married yet their mother wants to give them land.

The court was not shown any will made by the deceased. None was filed at the registry with the petition herein as required by law. For all intents and purposes therefore, the deceased herein died intestate and his estate must be distributed in accordance with Part V of the laws of Succession Act (cap 160 Laws of Kenya) and more particularly Section 35(1) of the said Act.

Under that section, the net intestate estate vests in the surviving spouse - in this case the petitioner - who has a life interest in the same. During her life time, she can exercise her power of appointment in favour of any of the beneficiaries. This appears to be what she has opted to do. The same law provides that in the event the surviving spouse dies, then the entire estate will be divided equally among all the surviving children.

This section does not therefore discriminate against the daughters in favour of

the son. Nor does it disqualify the married daughters from inheriting the property. If the protestor wants to go by this option, then the estate will revert to the petitioner who will have a life interest in the estate and once she is gone, he and all the sisters will share the land equally. He will end up getting an even smaller share from what the petitioner wants to give him now.

The mode of distribution proposed by the petitioner is in my view fair and just. I would nonetheless make a slight adjustment if only to appease the protestor in the interest of his mothers' peace of mind and order that the petitioner i.e. Mbaka Namu gets a life interest in the 1 acre she has left for herself and the remainder thereof reverts to the protester Perminus Njiru Namu.

I therefore allow the application dated 31/3/09 with a slight amendment to the schedule and confirm the grant on the following terms:

**(a) KAGAARI/KIGAA/693 measuring 2.89 Acres to be distributed as follows:**

**(i) PERIS MBIRO NAMU 1D. 1305195 to get 1.89 acres.**

**(ii) MBAKA NAMU have a life interest over 1 acre, remainder to PERMINUS NJIRU NAMU.**

**(b) KAGAARI/KIGAA/359 measuring 4.70 Acres to be distributed as follows:**

**(iii) PERMINUS NJIRU NAMU - 2 Acres.**

**(iv) JANE IGANDU NYAGA - 1.35 Acres.**

**(v) EDITH THAARA MURANO - 1.35 Acres.**

A certificate of confirmation to issue to that effect.

Delivered, signed and dated at Embu this 7<sup>th</sup> day of June 2010.

**W. KARANJA**  
**JUDGE**

