

**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)
Succession Cause 2603 of 1997**

IN THE MATTER OF THE ESTATE OF N W G ('DECEASED')

JUDGMENT

The main issue in this cause is whether ESTHER WAITHERU ('Esther'), is entitled to inherit the late **N W G** ('the deceased'), who died intestate in the year 1990, and whose only asset was land parcel known as **[particulars withheld]**

According to the pleadings and the evidence on record there is no doubt that E was the wife of the deceased with whom she had two sons and one daughter, namely **P G W**, **R K W** and **N W W**, who were all adults at the time of his death.

It is also on record that **N W W** petitioned the court and obtained letters to administer his father's estate after issuing citations to his siblings, and that the relevant Grant was confirmed on 11/2/1998 at which point, he clearly indicated in his affidavit that the sole asset would be shared as follows:

P G W – 0.80 hectares.

R K W - 0.62 hectares, and

N W W – 1.21 hectares.

Access roads – 0.10 hectares

He did not provide for his mother and hence this application, and **E** now seeks an order to have the Grant revoked mainly on the ground that she was not provided for. She alleges fraud. She has the support of **P** and **R**

I have considered the pleadings as well as the evidence on record and in my view all are agreed that Esther was the wife of the deceased, and that being the case then, she is entitled to inherit her late husband.

Apart for considering the evidence on record, I have also perused the record and I am convinced that his mother and siblings were not party to the proceedings that led to the confirmation of the Grant, and it cannot be therefore said that they would have necessarily conceded to the proposed mode of distribution, but having been cited to no avail, I would hesitate to find that Nahashon acted fraudulently and would readily ignore the allegation.

Though Esther alleged that her late husband had subdivided the land into four parcels amongst the 4 beneficiaries prior to his death, she was not able to avail proof and I will disregard the allegation.

Be that as it may, the issue that arises is, would it be prudent at this stage to revoke a Grant that was confirmed over 13 years ago and especially where it has been shown that the land has already been subdivided in accordance with the proposals contained in the affidavit which was filed in support of the application for confirmation?

In my humble opinion, I feel that it would not serve the cause of justice to revoke the Grant at this stage, and would, which I hereby do order that it be rectified so as to accommodate Esther who shall get a portion of 0.41 hectares out of **N W W** share of 1.21 hectares. **N** shall bear the costs of that excision and the registration of the said parcel in his mother's favour. He shall also ensure that **P** and **R**'s shares are registered in their names with immediate effect save that the two shall bear the costs of the issuance of the titles in their favour.

N shall also bear the costs of this suit.

Dated and delivered at Nairobi this 7th day of July 2010.

JEANNE GACHECHE

Judge

Delivered in the presence of:

For the applicant - Mrs. Wambugu

For the respondent - Mr. Wanjama