



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT EMBU

SUCCESSION CAUSE NO. 2 OF 1998

(IN THE MATTER OF THE ESTATE OF WAMBIRO M'MIRU)

KIURA MUVOE.....PETITIONER
VESUS
ANTHONY NJAGI NDUATI.....PROTESTOR

R U L I N G

The deceased in the succession cause is one **WAMBIRO M'MIRU** who is said to have died in 1968. She died intestate leaving behind one daughter named **Paulina Maitha**. Both Anthony Njagi and Kiura Muvue filed separate succession causes seeking to inherit the parcel of land i.e. **KAGAARI/WERU/197** which had been left by the late Wambiro. A consent order was later entered into on 31.7.2000 where both parties agreed that the Grants issued to Anthony Njagi and Kiura Muvue be revoked and the 2 matters be consolidated. This was done and on 1/11/04 directions were given to the effect that the matter proceeds by way of *viva voce* evidence.

Anthony Njagi Nduati was treated as the protestor while Kiura Muvue was treated as the petitioner. I heard the *viva voce* evidence with the protestor calling 1 witness while the petitioner also called 1 witness. The witness called by the protestor – one Paulina Maitha was the only child of the deceased.

The protestor maintained that he was related to the deceased but the petitioner was just a member of their clan. Kiura Muvue on the other hand maintained that the deceased was a mother to his uncle and that Anthony Nduati was the clansman. The 2 parties nonetheless agree that the deceased was Paulina's real mother. According to Paulina, Anthony Nduati (the protestor) was her step brother because after her father died, Anthony's father took over her mother in the traditional way.

I have keenly considered the evidence of the parties and their witnesses. It is not disputed that neither the protestor nor the petitioner were the deceased's blood children or even grand children. The person who would be in a position to tell which of the 2 men was related to the deceased is her own blood daughter, Paulina. She explained clearly to the court that the petitioner Kiura Muvue was just a member of the clan who was not related to her or the deceased. On the other hand, she testified that the protestor was her step brother because her late mother was inherited by the protestor's father. She further told the court that the protestor was the one who was living on the land in question and he was the one who used to take care of her late mother.

I have no reason to doubt Paulina's evidence. She was the real daughter to the deceased Wambiro M'Miru and she is the one who is entitled to inherit her land. She told the court that she had decided that the protestor gets 4 acres while she gets one acre.

According to the petitioner, the deceased was a mother to his uncle. That in my considered view is a relationship that is too far removed and it cannot confer any property rights to the petitioner. Indeed, that relationship can only be defined as a "clan member" and being a clan member, in equality to all other clan members cannot entitle the petitioner to inherit the deceased's land when there are other persons who had a closer relationship to her. It is my finding therefore that Kiura Muvue has not shown that he is entitled to inherit the deceased's property. Indeed the person who stands ahead in order of priority is Paulina. She

was the flesh and blood of the deceased.

She told the court that the deceased had left the land to her but that she decided to give the protestor a portion. She said that she only wanted 1 acre out of that parcel and the rest to be inherited by the protestor. I find that proposal fair and just. I endorse it. Since Paulina had not filed any succession cause in respect of her later mother's estate, I order that a Grant of letters of administration be re-issued to Anthony Nduati and the same be confirmed to the effect that Anthony Nduati gets 4 acres out of the said land with Paulina Maitha getting 1 acre. The petitioner is not entitled to any part of the deceased's land. His claim is therefore dismissed. Due to the nature of this matter, I direct that each party bears its own costs of the entire cause.

W. KARANJA
JUDGE

Delivered, signed and dated at Embu this 28th day of October 2010.

In presence of:- Both parties & Mr. Utuku for objector.