

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NYERI

SUCCESSION CAUSE NO.154 OF 2010

IN THE MATTER OF ESTATE OF MUROBI KAMUCHERU
.....DECEASED

AND

MARGARET WANJIRU MUROBI.....
PETITIONER

VERSUS

JACKSON MWANGI MWAHURI.....
OBJECTOR

RULING

When Murobi Kamucheru passed away, Margaret Wanjiru Murobi (Petitioner), the deceased's daughter, applied to be given letters of administration intestate to administer the deceased's estate before the Murang'a R.M's Court. Jackson Mwangi Mwahuri (Objector) a nephew to the deceased, filed an objection to the making of the grant to the Petitioner on the basis that she was not going to properly administer the deceased's estate because she was married. He also cross-petitioned for the grant. On 28th May 2008, the grant of letters of administration was granted in the joint names of Petitioner and the Objector. The Petitioner applied for the grant to be confirmed vide the summons for confirmation of grant dated 24th February 2009 in which she proposed to solely inherit the deceased's assets. The objector filed an affidavit of protest in which he opposed the Petitioner's schedule of distribution. Directions were given to the effect that the dispute be disposed of by oral evidence. The Protestor and Petitioner each testified in support of their positions without summoning the evidence of independent witnesses.

According to the evidence of the Protestor, the deceased had two brothers namely Mwahuri Kamucheru (Protestor's father) and Nyingi Kamucheru. It is said during land consolidation the deceased caused himself to be registered as the proprietor of the parcel of land known as Loc. 10/Wanjengi/342 measuring 3 acres in trust for himself and his two brothers. The Protestor stated that the trio were to share the aforesaid parcel of land in equal measure of 1 acre each. The Protestor further claimed that the deceased subdivided the aforesaid parcel of land into two portions vizly: Loc. 10/Wanjengi/954 (1 acre) and Loc. 10/Wanjengi/955 (two acres). It is said the deceased sold L.R. No. Loc. 10/Wanjengi/954 leaving Loc. 10/Wanjengi/955 to be shared by his brothers. According to the Protestor, the Petitioner was not entitled to share the remaining parcel of land because her father (deceased) had sold what was entitled to him. The Petitioner accused the Protestor of discriminating against her because she was a married daughter of the deceased.

I have considered the oral evidence tendered by both sides and the written submissions. It is obvious that the Protestor's claim is based on trust. I find the Protest to be well founded. However the grant cannot be confirmed on the basis of the affidavit of protest because a claim based on trust cannot be established through these proceedings. A fair order to make in the circumstances is to suspend the confirmation of grant pending the determination of the claim based on trust under rule 41 (2) and (3) of the Probate and Administration Rules which I hereby make. Costs of the proceedings to abide the outcome of the aforesaid action.

Dated and delivered this 25th day of November 2010.

J.K. SERGON

JUDGE

In open court in the presence of Mr. Mutiso holding brief Kiambi for the objector and no appearance for Petitioner.