



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**

**AT EMBU**

**CIVIL APPEAL NO. 1 OF 2010**

NANCY NJERI THEURI.....1<sup>ST</sup> APPELLANT  
DANIEL GIKUNJU MURAGE.....2<sup>ND</sup> APPELLANT

**VERSUS**

SOPHIA KABUI MURAGE.....1<sup>ST</sup> RESPONDENT  
EDWARD NJOKA MURAGE.....2<sup>ND</sup> RESPONDENT

**J U D G M E N T**

The parties herein are all members of the same family. Sophia Kabui Murage who is the 1<sup>st</sup> Respondent in this Appeal was the wife of the late Murage Gitumba Njoka, 2<sup>nd</sup> Respondent was a son to the deceased. The 2 filed for a grant of letters of administration before the Resident Magistrate in Kerugoya. The letters were granted and they filed the application for the confirmation of the Grant. The appellants herein protested against the petitioners proposed mode of distribution. *Viva voce* evidence was called and after hearing both sides, the learned magistrate dismissed the protest and allowed the petitioners mode of distribution. The protesters were unhappy with that decision and they therefore filed an Appeal jointly. They have proffered 8 grounds of Appeal which I shall nonetheless not replicate for purposes of this judgment. I have considered the same carefully along with the evidence adduced before the trial court. I note that although the Appellants have asked the court to allow the Appeal and set aside the judgment of the learned trial magistrate, they have not suggested how the property should be distributed or asked the court to redistribute the same. If therefore I was to set aside the said judgment, what would happen to the estate? Would it be left hanging in the air? I have however noted from the proceedings before the trial court that the Appellants wanted the estate to be distributed as follows:-

***(a) Daniel Gikunju Murage – 6 acres***

***(b) Perterson Muriu Murage – 6 acres***

***(c) Sophia Kabui Murage to have a life interest on the portion of 8.38 acres but the portion be registered in the names of***

***(i) David Murage Theuri***

**(ii) Gerald Murage Gakunju**

**(iii) Gerald Murage Muriu**

The 2<sup>nd</sup> Appellant is not even factored in this mode of distribution.

The protestors' proposal and that of the Respondents herein as far as the 1<sup>st</sup> Appellant and one Peterson Muriu Murage are the same. The only contention which would have aggravated the Appeal therefore is the rest of the property which the petitioner distributed to all the beneficiaries instead of holding a life interest in the same and having it registered in the names of the 3 listed beneficiaries only. In my view, the distribution by the Respondents herein was much more fairer and all inclusive than that proposed by the Appellants herein. I share the same view with the learned trial magistrate that the distribution was reasonable as none of the deceased's children were left out. In arriving at that judgment, the learned magistrate considered the evidence that was adduced before him and I must say he arrived at the correct position.

I have no reason whatsoever to interfere with that judgment more so because the court has not been asked to redistribute the property in any other manner.

This Appeal has no merit. The same therefore must fail and it is hereby dismissed with each party being ordered to pay its own costs.

The subordinate court record does not show if a certificate of confirmation was ever issued following that judgment. I therefore order that a certificate of confirmation do issue to the petitioners in terms of paragraph 6 of the supporting Affidavit of Sophia Kabui Murage dated 21/8/2009.

**W. KARANJA**

**JUDGE**

Dated, signed and delivered at Embu this 24<sup>th</sup> day of November 2010

**In presence of:- All parties herein.**