

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

Succession Cause 238 of 2008

IN THE MATTER OF THE ESTATE OF JAMES GITHIGI GATHURA (DECEASED)

AND

GODFFREY KIBUTHU GITHIGI1ST APPLICANT

SIMON KARIUKI 2ND APPLICANT

JOHN T. KARIUKI 3RD APPLICANT

PAUL MUTURI KARIUKI 4TH APPLICANT

CHARLS KARIUKI 5TH APPLICANT

RULING

The grant of representation for the estate of the deceased, James Githigi Gathura was issued to Geoffrey Kibuthu Githigi (the petitioner) and subsequently confirmed on 13th March 2009.

The applicants have now brought the present application seeking that their mother, Alice Wangui Kariuki, the widow of the late Alexander Kariuki Githigi, who was one of the sons of the deceased, be compelled to share the proceeds of sale of one acre of L.R. NO. AGUTHI/GAKI/1335 pending *interpartes* hearing of this application and an order of inhibition to stop any dealings with the said L.R. No. AGUTHI/GAKI/1135.

The grounds upon which the application is brought are that the applicants are grandchildren of the deceased who was the father of their father. That their father predeceased the deceased, but was nonetheless entitled to one acre of the suit property. That their father's share has been allocated to their mother who intends to sell it.

The applicants further aver that while their uncles are at liberty to sell their respective shares, the shares of their father ear-marked for their mother ought to be held by her in trust for them. That since she has already sold it at Kshs. 750,000/= that the proceeds be distributed equally to the children of their late father.

No replying affidavit on grounds of opposition have been filed in response. The mother of the applicants (the respondent) has through counsel filed a notice of preliminary objection in which it is argued that the application is incurably defective, incompetent and bad in law and that it offends section 30 of the Law of Succession Act. This ruling relates to the preliminary objection.

To the extent that the objection raised relates to the jurisdiction of this court to entertain this application after the confirmation of the grant it relates to a point of law which is capable of disposing of this application if successfully argued, in terms of the authority of **Mukisa Biscuit Manufacturing Co. Ltd V. West End Distributors Ltd** (1969) EA 698.

The application is expressed to be brought under sections 26, 27, 28 and 29 of the Law of Succession Act

which deal with provisions for dependants. They provide *interalia*, that the court shall make reasonable provision out of the deceased person's estate to his dependants.

However, section 30 of the Law of Succession Act provides that no application under sections 26, 27, 28 and 29 can be brought after the grant has been confirmed.

On that ground alone, the objection is sustained and the application dated 20th March 2009 dismissed. I make no orders as to costs.

Dated and delivered at Meru this 12thday of ...June. 2009.

W. OUKO

JUDGE