



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MERU
SUCCESSION CAUSE 447 OF 2004

REBECCA KAGWIRIA JOSEPH PETITIONER

VERSUS

MIRIAM INOKOBIA JOSEPH 1ST OBJECTOR

RUTH KAUNDU UNGU 2ND OBJECTOR

JUDGMENT

Rebecca Kagwiria (Rebecca) petitioned for grant of letters of administration in this matter. In so doing she listed who survived the deceased as herself and 3 grand children who included her son Christopher Gitonga (Christopher).

Through an objection that was filed by Mariam Inokobia Joseph (Mariam), the court was informed that the petitioner, Rebecca, had not been candid to the court in stating that those listed in the petition were the only surviving beneficiaries of the deceased. Mariam, who was the wife, of the deceased herein. Rebecca is one of the daughters of the deceased. The deceased also left surviving him the following:-

- (i) Ruth Kaundu Ungu – daughter
- (ii) Rebecca Kagwiria – daughter
- (iii) Julia Kathao – daughter
- (iv) Real Nkatha Mwanika – daughter
- (v) Beth Karimi – daughter – Deceased survived by:-
 - a. Tabitha Mukiria – 15 years
 - b. Lydia Gatwiri – 10 years
 - c. Ruth Karambu – 8 years
 - (iv) Pamela Muthoni Joseph – daughter

Mariam, by a certificate of urgency, sought to be restored into her matrimonial home where she said she had been chased by Rebecca and her son Christopher. Mariam set out in her application very disturbing information about the interference and the violence she was experiencing from Rebecca and Christopher. The court in considering her application, delivered a ruling ordering that Mariam be restored into her matrimonial home. The court made the following findings:-

“At the same time, I am persuaded that due to hostilities emanating from the respondent (Rebecca) and her children, the 1st applicant has been forced to move out of her matrimonial home. Strictly speaking, and without preempting the outcome of this cause, the 1st applicant has the priority to inherit the suit property being her matrimonial home. I find that in this application exceptional circumstances exist to justify the grant of a mandatory injunction on an interlocutory application.”

That ruling was not appeal against and that finding therefore still stands. The court proceeded thereafter to appoint the deceased daughters Ruth Karambu and Rebecca Kagwiria and the now deceased widow Mariam as joint administrators. Mariam passed away on 4th May 2009. Accordingly, on 30th June 2009 the court revoked the grant issued and ordered that a fresh one be issued jointly to the names of Ruth and Rebecca. Rebecca filed an affidavit dated 29th April 2009 proposing her mode of distribution of the deceased estate. By that distribution, she allocated land to Christopher on the basis that he had been maintained by the deceased.

The document that was attached to the affidavit as evidence of that maintenance was Christopher's certificate of baptism. It indicated in the appropriate column that the deceased and Mariam were the parents of Christopher. In my view, that document is not indicative of the deceased maintenance of Christopher. It is not clear under what circumstances the deceased and his wife Mariam were described as parents of Christopher.

On the whole, I have considered the proposed distribution by Rebecca. I find that it is lob sided in favour of Rebecca. It is not equitable. I have considered the distribution suggested by Ruth by her affidavit sworn on 29th June 2009. That mode of distribution is selfless and inequitable. There was no basis made before court why Christopher should share in the distribution of this estate. The judgment of this court is as follows:-

1. That the grant hereof be confirmed in the following terms:-

2. (a) Land parcel No. NJIA/KIEGOI/289 be divided equally into 6 portions

(i) Ruth Kaundu Ungu - 1 portion - whole

(ii) Rebecca Kagwiria – daughter - 1 portion - whole

(iii) Julia Kathao – daughter – 1 portion - whole

(iv) Rael Nkatha Mwanika – daughter 1 portion whole

(a) Tabitha Mukiria-15 yrs one portion equally for all

(b) Ruth Karambu -8yrs of them to be held in trust

(c) Lydia Gatwiri -10 yrs by Ruth Kaundu Ungu

until they all attain the

age of 18.

Pamela Muthoni Joseph – daughter – one portion whole

2. *In distribution of parcel NJIA/KIEGOI/289, as stated hereabove, Ruth Kaundu Ungu, Julia Kathao, Rael Nkatha Mwanika, Pamela Muthoni and Rebecca Kagwiria each is to get equal number of tea bushes on that land.*
3. *Tabitha Mukiria, Lydia Gatwiri and Ruth Karambu, they shall be allocated on Njia/Kiegoi/289 as stated in No. 1 above where the house of Mariam Inokobia Joseph is situated. In that regard, Rebecca Kagwiria and Christopher Gitonga, their servants and agents are ordered to give vacant possession to the said minors of that house within 14 days from this date hereof. In default, an order of eviction of Rebecca Kagwiria and Christopher Gitonga, their servants and agents is to issue forthwith.*
4. *Rebecca Kagwiria and Christopher Gitonga's gift intervivos given to them by the deceased will be taken into account in distributing parcel No. 287/KITHIENE ADJUDICATION UNIT. That parcel of land that is:- 287/KITHIENE ADJUDICATION UNIT shall be distributed to Pamela Muthoni – whole.*
5. *The court authorizes Ruth Kaunduungu to sign all the necessary documents required to put into effect the judgment of this court.*

Dated and delivered at Meru this 23rd day of July 2009.

MARY KASANGO

JUDGE