



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MERU
Succession Cause 379 of 2002
IN THE MATTER OF THE ESTATE OF M'MARETE M'MWIRICHIA (DECEASED)

RUTH KINYA M'MARETE PETITIONER

VERSUS

GERALD THURANIRA MARETE... 1ST INTENDED OBJECTOR

AND

LUCY NTHURWA MARETE 2ND INTENDED OBJECTOR

JUDGMENT

A petition for grant of letters of administration intestate was filed in respect of this estate by Ruth Kinya M'Marete. The only asset of the estate is land parcel No. Kiirua/Naari/577. After the expiry of 6 months from the date when the grant was issued to her, she applied for confirmation of the grant. She made proposals for distribution of the estate property and in making that distribution, she did not make provision for Maritha Kathambi who was said to be the first wife of the deceased. Protest to confirmation was filed by Gerald Thurania Marete and Lucy Nthurwa Marete. Those two affidavits of protest are a duplicate of each other. The matter was ordered to proceed by way of *viva voce* evidence. Considering the evidence that was adduced before court, it is clear that the parties are aggrieved in respect of the land to be distributed to the petitioner and the children of the deceased. What however seems to cause disagreement is whether or not Maritha should be given land. It is clear from the evidence that Maritha

did at one time live with the deceased. It is not clear under what circumstances she lived with him. The protestor and his witnesses said that she was married to the deceased but due to disagreement and it seems to be in the early 1960's she returned to her parent's home. It is clear that Gerald Thurania who is a son of Maritha went to collect her from her parent's home when the deceased died. According to the petitioner, the purpose of getting her was to ensure that she laid claim over the property. The protestor's witnesses said that Maritha had not been divorced according to the Kimeru customary law. To them she was still a wife of the deceased. It is accepted by all that the petitioner and the deceased got married in church. Section 2 of the Law of Succession Act defines a wife thus,

“Wife” includes a wife who is separated from her husband and the terms “husband” and “spouse”, “widow” and “widower” shall have a corresponding meaning.”

The petitioner did not contradict the protestor's evidence that Maritha was with the deceased prior to their marriage but she stated that Maritha had left the deceased home in the early 60's and had left her children young leaving the petitioner with the responsibility of bringing them up. I therefore make a finding that Maritha is a wife as per the above definition but in my view, since she was not living with the deceased for many years prior to his death and her children were brought up by the petitioner, her entitlement over the property will accordingly be reduced. Doing the best that I can from the evidence adduced before me, I make the following judgment:-

1. In respect of parcel No. Kiirua/Naari/577 distribution shall be as follows:-

<u>PERSONS ENTITLED</u>	<u>SHARES</u>
(A) Ruth Kinya M'Marete	1.45 acres
(b) Sebastian Ayub Kinyinga	2.5 acres
(c) Gerald Thurania Marete	2 acres
(d) John Marete	2 ¼ acres
(e) Lucy Nthurwa Marete	1 ½ acres
(f) Maritha Kathamba	½ acres

2. There shall be no orders as to costs.

Dated and delivered at Meru this 30th day of October 2009.

MARY KASANGO

JUDGE