

REPUBLIC OF KENYA

IN THE HIGH COURT

AT NYERI

Succession Cause 390 of 2006

IN THE MATTER OF THE ESTATE OF MUBIA S/O KABIRODECEASED

PRISCAH NJERI WANYINYI.....PETITIONER

VERSUS

FLORENCE WANJIRU MUBIA.....OBJECTOR

RULING

The Grant of Letters of Administration intestate of the Estate of Mubia s/o Kabiro, deceased was given to **PRISCA NJERI WANYINYI**, the Petitioner herein, on 24th April 2008. The Petitioner is before this Court seeking to have the aforesaid grant confirmed by the Summons for Confirmation of Grant dated 4th November 2008. On the 16th day of December 2008, **FLORENCE WANJIRU MUBIA**, the Objector herein, filed an affidavit she swore to protest the confirmation of the grant. This Court directed on 23rd January 2009, to have the protest and the application for confirmation of grant to be determined by oral evidence.

When the cause came up for hearing the Objector's case was heard *ex parte* when the Petitioner failed to turn up despite the fact that the hearing date was taken by consent. The Objector testified and also tendered the evidence of one witness. Florence Wanjiru Mubea (P. W. 2), claimed that he lived with her children on the parcel of land known as **MUHITO/MBIUNI/505** at the life time of the deceased. She claimed that the land was donated to her by the deceased because she was not married. She said her sisters namely, Charity Wangui Kainie and Prisca Njeri Wanyinyi are married hence they are not entitled to inherit the land. P. W. 2 summoned Mubea Kabiru (P. W. 1) as a witness to support her cause. P. W. 1 claimed he was a grandson to the deceased and a son of P. W. 2. P. W. 1 stated that the deceased gave the parcel of land known as **MUHITO/MBIUNI/505** to his mother (P. W. 2) since she was not married. P. W. 1 also said that her mother has been in occupation of the suit land since 1954. I have already stated that Petitioner failed to turn up for hearing hence I have no evidence to counter those presented by the Objector. I have carefully perused the Summons for Confirmation of the Grant dated 4th November 2008 plus the affidavit of support sworn by Prisca Njeri Wanyinyi (Petitioner). It is stated that the Petitioner, the Objector and Charity Wangui Kainie are daughters of Mubia s/o Kabiro, deceased. They are therefore beneficiaries to the estate of the deceased. The Petitioner proposes to have the parcel of land known as **MUHITO/MBIUNI/505** to be shared equally between the two. The Objector has filed an affidavit of protest. She states that the aforesaid land had been given to her solely by the deceased since she was unmarried.

I have considered the evidence tendered by the Objector and her witness. Basically the Objector is

saying that the deceased left an oral will which vested the land solely to her to the exclusion of the Petitioner and her other sister. It was incumbent upon the Objector to tender evidence to establish the oral will under *Section 9* of the Law of Succession Act. In order for an oral will to be valid, the following conditions must be met: First, an oral will must be made before two or more competent witnesses. Secondly, that the testator dies within a period of three months from the date of making the will. Thirdly, that there is no written will. The evidence tendered does not establish when the oral will was made. The evidence does not also state the number and names of witnesses who were present when the deceased made the oral will. The main contention raised by the Objector is that the deceased gave her the land because she was unmarried. I do not think this assertion can stand as the law and the Kikuyu customs and practices do not discriminate against any of the beneficiaries on account of marital status. The daughters of the deceased must share in equal share the deceased's estate. I see no merit in the protest. The application for the Confirmation of Grant of Letters of Administration meets the requirements of law hence cannot be faulted.

In the final analysis, I dismiss the protest and proceed to confirm the grant given to Prisca Njeri Wanyinyi on 24th April 2008. Each party to meet her own costs.

Dated and delivered this 13th day of November 2009.

J. K. SERGON

JUDGE