

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

Succession Cause 114 of 2004

IN THE MATTER OF THE ESTATE OF M'RINCHUNI M'KIENGO

ROSE NTHIORI PETITIONER

VERSUS

SALOME KOORU 1ST PROTESTOR

HELLEN MUKIRI 2ND PROTESTOR

JUDGEMENT

The petitioners, Caroline Nkirote and Rose Nthiori Mutwiri petitioned for grant of letters of administration intestate in respect of the estate of their grandfather the deceased herein. In that petition, the name Salome Kooru and Hellen Mukiri as the daughters of the deceased. It is pertinent to note that the consent that was filed bore a thumb print allegedly of Salome Kooru but was not commissioned or witnessed by an advocate. The petitioners by their summons dated 10th June 2005 sought to jointly inherit the only property of this estate being Igoki/Ntima/1445. An affidavit of protest was filed by Salome. In that affidavit, and indeed in the oral evidence as she adduced in support of the protest, she stated that the deceased had 4 children who were Salome Kooru, David Mutwiri, Lydia Mwari and Hellen Mukiri. David and Lydia are now deceased. David was the father of the two petitioners. Salome opposed the mode of distribution indicated in the summons for confirmation stating that the said distribution was unfair and unjust. In her affidavit in support, she requested that the estate be divided in three portions one for herself, the other for Hellen and the lastly to the children of David Mutwiri, that is the petitioners. At the hearing by way of *viva voce* evidence, Salome on being asked why Hellen Mukiri had not come to give evidence seeking to inherit the deceased land, she retorted by saying that Hellen was unwell and could not attend court. Salome's case is that the petitioners can only inherit what their deceased father would have been entitled to. The only person who appeared to support the petitioner's case was Rose Nthiori Mutwiri. She stated that Salome could not inherit the deceased land because she was married. Further, she said that David Mutwiri was the only son of the deceased and by virtue of him being the father of her and her co-petitioner, they were entitled to inherit the whole land. She did however concede that Salome does cultivate half an acre of that land. That essentially was the evidence that was adduced before court. In my view, a granddaughter does not have a greater right of inheritance over that of a child of the deceased. Salome is a child of the deceased in this estate. For that reason, the interest of justice would require that she get a greater portion of the property than the petitioners who are

deceased's grandchildren. On the evidence brought before me, I find that she is entitled to half an acre of that property and the balance should go to the petitioner. The judgment of this court is as follows:-

Ntima/Igoki/5240 shall be distributed as follows:-

- 1. Salome Kooru half an acre**
- 2. Caroline Nkirote and Rose Nthiori Mutwiri the balance to be shared between them equally each getting their own portion.**
- 3. A confirm grant shall issue in those terms**
- 4. There shall be no orders as to costs**

Dated and delivered at Meru this 6th day of November 2009.

MARY KASANGO

JUDGE