



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT EMBU**

Civil Appeal 39 of 2002

FREDRICK NJIRU NYAGA.....APPELLANT

VERSUS

VINZENZA RWAMBA NJIRU.....RESPONDENT

JUDGMENT ON APPEAL

This appeal arises out of Succession Case wherein the lower court made order distributing the 6 ¼ acres of the deceased land among beneficiaries. The grounds of appeal as set out in the memorandum of appeal dated 29/1/2007 (with leave). The first ground is that the Trial Magistrate appointed 8 persons to be administrators of the estate. This is contrary to provisions of Section 56 (1) (b) which limits the number of administrators to 4 persons in respect of same estate.

Regarding issue numbered 2, 3, 4 distribution of a deceased estate intestate is set out in the Succession Act. The court has to distribute the estate as provided. The evidence here shows that the survivors were 6 daughters and one son distribution is subject to Section 38 of the Act. The estate should be distributed according to law unless parties agree otherwise. Concerning ground 5 the value of the estate for purpose of conferring jurisdiction has to be proved not just alleged. I find no evidence of the value of the land.

Upon considering the above I find that the appeal succeeds the grounds of appeal have merit. The appeal is therefore allowed. Since this dispute involves members of the same family, no order is made as to costs. Each party to meet its own costs.

Orders accordingly.

Dated this 18th January, 2008.

J. N. KHAMINWA

JUDGE

18/1/2008

Khaminwa- Judge

Njue – Clerk

Mr. Kathungu

Ms Wairimu

Read in open court

J. N. KHAMINWA

JUDGE