



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT EMBU
Succession 803 of 2002

IN THE MATTER OF ESTATE OF ISAIAH MWARANJIRU KANGITI

ALIAS NYAGA KANGITI....(DSD)

ALICE KAVIA NYAGA.....PETITIONER

VERSUS

ABIUD NJUE MOSES.....OBJECTOR/APPLICANT

RULING

Alice Kavia Nyaga the widow of deceased petitioned for a grant of representation in the estate of her deceased husband, Isaiah Mwaranjiru Kangiti.

On 21/9/1998 an objection was filed by Abiud Moses Njue claiming one acre of land he had purchased from the deceased and that he was not included in P&A Form 5. The objector has filed citations against Alice to accept or refuse grant. Now this is wrong procedure because the petitioner had already petitioned for grant.

The protester gave evidence in court. He said he purchased land from the other wife of deceased called wambogo and paid full purchase price and paid to her and her son Mathew. He exhibited a sale agreement as exhibit 1 and Exhibit 2. No Land Board Control Consent was obtained. To date of trial he never got possession or the transfer or the subdivision of his share.

On the part of Petitioner she said the sale was after the death of deceased. And she does not know about it as was between the protester and the deceased administrator and her son.

From the above it is my finding that the claim of the protester is proved against deceased beneficiary and her son. However the transaction has never been completed. No consent of the Land Board has been obtained. One vendor died and the other Mathew has disappeared no one knows of his whereabouts.

The surviving administrator confirms that there is a share of land to be inherited by the son of deceased administrator Mathew and she is willing to subdivide the land and give Mathew his inheritance. It is my view and I find that justice can only be done to the protester by allocating one acre of the inheritance of Mathew to him.

I therefore order the surviving administrator to proceed to subdivide the land for purpose of distribution and allocate the protester one acre out of Mathew's share. The subdivision to be carried out within the next 45 days.

No order as to costs. It is so ordered.

Dated this 14th January, 2008.

J. N. KHAMINWA

JUDGE

The grant is hereby confirmed in accordance of this ruling. Certificate to issue.

J. N. KHAMINWA

JUDGE

14/1/2008

Ruling read in present of both parties in open court.

J. N. KHAMINWA

JUDGE