



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT EMBU

Succession 323 of 2002

IN THE MATTER OF THE ESTATE OF NJIRU MWARANJERU....DSD

AND

JOHN MURIUKI MARUKU.....PETITIONER

NICERA RUGURU MARUGU.....OBJECTOR

JUDGMENT

Nicera Ruguru Maruku and Rosemary Marigu (Mariku) filed separate protest against confirmation of the grant issued to the petitioner on the grounds that they each were allocated one acre while the others are granted over ten acres and the brothers have other parcels of land. At the hearing of protests, the first witness was Rosemary Marigu Mariku a daughter of deceased. The deceased was a polygamous man with 2 wives and 12 children. She opposed the confirmation because although her father had 9.68 Ha (24 acres) and she was never been married. She was allotted only one acre (1 acre) while the only 2 brothers took 12 acres for petitioner 10 acres for Nyaga and Nicera other protester was allotted one acre also. She testified that 4 of her sisters have died and the others 6 are married and have not asked for any inheritance. There was another piece of land held by petitioner Exhibit 2 shows the first proprietor Muriuki Muruku was registered on 17/10/1961 but now he has corrected his name to John Muriuki Maruku as from 11/10/76. The title Number is Gatari/Nembure/942 measuring 6.25 acres. There is also exhibit No. 3 Green Card for Gatari/Nemburi/9277 measuring 1.52 ha. The registered proprietor is Nyaga Marigu which has been subdivided into plot No.9620 & 9621. She further said she had 7 children to bring up and she asks for 6 acres.

Further evidence came from Petitioner who confirmed that the two wives of deceased are also dead. However he talked of directions from the father before his death but produced no supporting evidence of such instructions. He also disclosed that he got land Gatari/Nemburi/942 and his brother Nyaga was given 4 acres. He was of the view that the two houses of his father should he represented by the sons. Nyaga also gave evidence he was of the same view like his brother that the girls (their sisters) should get each one acre only. He also confirmed that himself and his brother the petitioner hold other portions see exhibit 2 & 3. He further said that the deceased had said sons to get 10 acres, 12 acres each. The law of distribution is provided in the Act. Cap 160 Section 40 provides for distribution in polygamous families. Therefore in this case there were two widows who have now died leaving children of the deceased as provided under Section 38 of the Act. The estate shall devolve among all children surviving in equal shares sons and daughters. The two protests are allowed. The application filed by petitioner and dated 14/11/2001 is hereby dismissed.

Costs of Application to be paid from the estate of deceased.

Dated this 14th February, 2008

J.N. KHAMINWA

JUDGE

14/12/2008

Khaminwa – Judge

Njue – Clerk

Mr. Ithiga Present

Ms Fatuma HB for Okwaro

Read in the open court.

J. N. KHAMINWA

JUDGE