

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NYERI

Succession Cause 136 of 1999

IN THE MATTER OF THE ESTATE OF KARIUKI KANYORA – DECEASED

BETWEEN

WANJA KARIUKI PETITIONER

AND

STEPHEN KANYORA KARIUKI PROTESTOR

J U D G M E N T

The Petitioner and Protestor herein are sister and brother respectively. They were sired by one Kariuki Kanyora; deceased. Kariuki Kanyora, hereinafter referred to as “the deceased” passed on sometimes on 8th August, 1968. On 5th November 1999, Wanja Kariuki, the petitioner, petitioned the Resident magistrate’s court, Karatina in succession cause number 83 of 1999 for the grant of the letters of administration intestate of the estate of the deceased. Unknown to the Petitioner however, her brother Stephen Kanyora Kariuki, the Protestor, had also filed a similar petition before this court on 17th March 1999.

Sometimes in February 2000, the protestor filed an application seeking the transfer to this court of the petition filed by the Petitioner in Karatina Resident Magistrate’s Court succession cause number 83 of 1999 on the grounds that the said Karatina Resident Magistrate’s Court succession cause was filed when the present cause had already been instituted. Secondly, that the estate involved herein was valued at Kshs.200,000/= well in excess of the pecuniary jurisdiction of the said court. On 9th October 2000, justice Juma heard the application and allowed it. The two causes were then consolidated for hearing.

Since the cause in Karatina had already advanced to the stage where it was pending confirmation of the grant issued on 5th April 2000, it fell upon the protestor to file his affidavit of protest. In her application for confirmation of the grant, the petitioner had proposed that land parcel No. Githi/Igana/739 being the only asset of the estate of the deceased be shared equally between the protestor and herself being the only surviving children of the deceased. In that scheme both the protestor and petitioner would end up with 2.85 acres.

The protestor was not comfortable with the proposal. He accordingly filed an affidavit of protest dated 24th June 2005 and filed in court on the same day. In the said affidavit the protestor deponed that the deceased was survived by himself and the petitioner. That the deceased had during his lifetime shared his land Githi/Igana/739 on the ground between the two of them. That he had established boundary features that they had maintained and respected to date and that each of them occupy their respective and distinct portions. That the Petitioner’s proposal that the land be shared equally would go against the intention and wishes of their father and would cause disruption of the status quo which has been maintained from the lifetime of the deceased.

Directions having been given on 16th November 2005 that the cause be disposed off by way of viva voce evidence, it fell on me to hear the matter on 20th February 2008.

In his testimony, the Protestor stated that the Petitioner was his sister. He objected to the mode of distribution of the estate proposed by the Petitioner on the ground that their deceased father had during his lifetime shared his land on the ground between them. The protestor in actual fact merely reiterated what he had deponed to in the affidavit of protest on record whose pertinent parts I have endeavoured to reproduce it elsewhere in this judgment. Suffice to say that towards the end of his oral testimony the protestor stated that he did not know the acreage of his portion of land. He was however agreeable to the surveyor going to the suit premises and subdividing the same equally provided both of them retained the portions currently in their occupation. Under cross-examination, the protestor maintained that the surveyor should subdivide the parcel of land in such manner that he retains the portion occupied by him and the Petitioner can retain what she occupies.

On her part, the petitioner testified that the protestor was her brother. That she petitioned for the grant of letters of administration. Later on she applied for the confirmation of the same and proposed that the land parcel be subdivided between the two equally as the sole surviving beneficiaries of the estate of the deceased. That she had no objection to

the suit premises being subdivided in such a manner that each one of them retain portions they currently occupy.

What am I being called upon to determine in this matter? I think the issue is fairly simple since the parties are in agreement that the land should be subdivided among them equally as the sole surviving beneficiaries of the estate of the deceased. It is common ground that before the deceased passed on he had during his lifetime shared his land Githi/Igana/739 between his two siblings. It is also common ground that since then the two have occupied their separate and distinct portions. It is also common ground that in the event of the subdivision by the surveyor, they would each prefer that the subdivision is done in such manner that each of them retains the portion currently in their occupation. It is also common ground that none of them knows the exact acreage of the portions in their occupation currently. However since it is agreed between the two that the suit premises be shared among the two equally, my task has been made much easier. I can only order that the parcel of land known as Githi/Igana/739 shall be subdivided into two equal portions to be shared equally between the petitioner and the protestor. In effecting the subdivision however care must be taken to ensure that the share of each of the parties herein is consistent with their current occupation of the subject piece of land. In other words the surveyor shall ensure that in subdividing the parcel of land into two equal portions the shares of the Petitioner and the protestor rhyme with their current physical occupation of the suit premises on the ground.

Accordingly the grant shall be confirmed on the basis that Githi/Igana/739 shall be subdivided into two equal portions for each of the parties to this cause in such a manner that each one of them retains the portions they currently occupy.

As this is a family dispute, there shall be no order as to costs.

Dated and delivered at Nyeri this 26th day of March 2008

M. S. A. MAKHANDIA

JUDGE