



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT EMBU

Civil Appeal 56 of 2005

SUSAN WATIRI MWANGI.....APPELLANT

VERSUS

MARY WANJIKU MACHARIA.....RESPONDENT

JUDGMENT

This appeal arises out of decision of Resident Magistrate at Kerugoya dated 18/4/2005 and ruling dated 3/10/2005 Senior Resident Magistrate Succession Cause No. 250/2002. The parties appear in this appeal, Appellant without advocate. The Respondent represented by Mr. Ratoro Esq. from the record there is Judgment made by court and dated 4/2/2005 between the Appellant and Respondent. I do not find any Judgment made on 18/4/2005 and 3/10/2005.

I have perused the record. The parents of the parties died and a piece of land Njuku/Kirima/29 is only assets to be inherited. The Trial court found that the land should be inherited by the brother and unmarried sister. Brother taking 3 acres and Respondent taking 2 acres. The father died in June 1981 during the same year this Act came into operation. However the succession proceedings were commenced in the year 2002.

Before his death the deceased subdivided his land and gave 3 acres to the son Patrick leaving 2 acres in the care of his wife now deceased. The daughters of deceased who are 3, dispute about the inheritance of the 2 acres. The problem is that one daughter resides on the land with her children while the others are residing in their marriage homes. The law is clear where survivors are children of deceased they shall take equally see. (see section 35 (5) of the Act).

The trial magistrate took into consideration irrelevant matters therefore making a decision against the law.

I therefore allow the appeal and order the 2 acres to be shared by 3 sisters equally as there is no objection to their brother keeping what he was given by the deceased during his life time.

It is so ordered. No costs awarded.

Dated this 22nd April, 2008.

J. N. KHAMINWA

JUDGE

22/4/2008

Khaminwa – Judge

Njue – Clerk

Mr. Rakoro – present

Appellant in person

Read in open court.

J. N. KHAMINWA

JUDGE