

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NYERI

Succession Cause 2 of 1998

IN THE MATTER OF THE ESTATE OF BERNARD MWAI NDEGWA... DCD

AND

PAUL MWAI NDEGWA..... PETITIONER

VERSUS

JAMES MWAI NDEGWA..... OBJECTOR

JUDGMENT

The petitioner herein was Paul Mwai Ndegwa. By notice dated 3rd March 1998 Nyambura and Muthoni his sisters renounced their rights and title to the letters of administration in this estate. The petitioner by an application dated 13th July 2004 sought confirmation of grant and prayed for distribution of the assets of the estate equally between himself and his other brother James Mwai Ndegwa. James Mwai Ndegwa protested against the mode of distribution. Paul Mwai Ndegwa and James Mwai Ndegwa are step brothers. Their deceased father whose estate is the subject of this cause had two wives. In the petition the properties of the estate are listed as follows;-

OTHAYA/GURA/97, OTHAYA/GURA/45, LAIKIPIA/TIGITHI/MATANYA/348.

Although in the petition the surviving beneficiaries were listed as three brothers and two sisters the only persons who have followed this cause are James and Paul. James in his protest against the mode of distribution stated that he is in agreement that the property Gura 45 be shares between him and Paul. In respect of Gura 97 he stated that he assisted his late father in purchasing the same. Even though he assisted his father to purchase that property that it was registered in the sole name of his late father. James did not produce any documentary evidence in support of his case nor did he call evidence to prove his contention. Paul in his evidence stated that the property Gura 97 was purchased by their father alone from their grandmother called Muthoni Kanyuna. In respect of the Laikipia property that too was purchased by their father. On being cross examined he stated that he had in the past occupied and utilized both properties at Gura 45 and 97.

In my judgment there is only one issue to consider that is did the protestor James buy the property Gura 97 and if so is the property part of the estate's assets? As stated before James did not produce evidence of such purchase. He also did not say that, if indeed, he contributed to the purchase price there was an intention between him and their deceased father that he was to benefit from the title of the land. It could after all be that it was his late father who was buying the property and James assisted him to pay the purchase price. If that being the case James cannot benefit from the title. I find that James failed to prove that he assisted his late father in purchasing Gura 97. I do find that that property forms part of the assets of the estate property. In respect of the Laikipia property it cannot be part of the estate property since it is registered in the name of the Government of Kenya. Having made that finding the judgment of the court is as follows:-

1. That Paul Mwai Ndegwa and James Mwai Ndegwa do get equal shares in the properties

Othaya/Gura/97 and Othaya/Gura/45 in equal shares.

2. *There shall be no orders as to costs in respect of the protest filed in court on 28th September 2004 by James Mwai Ndegwa.*

Dated and delivered at Nyeri this 10th day of April 2008.

MARY KASANGO

JUDGE