



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT EMBU

Succession 264 of 2004

IN THE MATTER OF THE ESTATE OF NJANAKE.....DECEASED

AND

SAMUEL NJERU NYAGA.....PETITIONER

DAVID NJERU JOSIAH GITARI.....OBJECTOR

RULING

Summons for confirmation of grant in this estate of Nyaga Njanake deceased was filed on 7/9/2005 by Samwel Njeru Nyaga. The application is supported by affidavit giving the identities of the survivors and the manner the administrator proposes to distribute the estate.

On 15/11/2005 one Kellen Wanyaga Njeru and Judy Muthoni and Ephantus Njeru filed an affidavit in protest against confirmation on the ground that the petitioner came to court without informing them and he has also excluded them from the distribution of the assets and also some so called beneficiaries are not survivors of the deceased. The hearing of the protest commenced on 1/11/2007. Kellen protester gave evidence. She said she was the eldest daughter of deceased and Samuel Njeru Nyaga is the youngest son of deceased. She said that her father the deceased had two wives:-

1. Monica Ruguru and
2. Rail Irimba Nyaga who is still living.

The beneficiaries are stated in the affidavit in support. She was not informed when case was filed. She gave her mother her ID card so that she can be included in the distribution. She said they are 2 girls and she was claiming that her mother was using before her death ½ acre portion. The widow living, Rail Irimba, testified that in his lifetime her husband had divided the land using surveyors. She was in charge of survey. She said that Kellen is entitled. Samuel Njeru has two portions from his mother and father. That s why he has taken 1 ½ acres. Let it be noted that on 1/11/2007 when hearing took place the petitioner did not appear. It is clear the deceased was a polygamous man. However the surviving widow desires that both boys and girls to inherit their fathers land. She supports the protest. The affidavit filed by Administrator shows that the survivors of deceased are seven persons including the widow. However he proposes to distribute the land among other 4 person named as:-

1. John Nyaga Njue
2. Angelo Kithinji Njoka
3. Daniel Njeru Josiah Gitiri

4. Moses Njue Mbogo

It is not explained how these persons acquired right of inheritance. The law does not discriminate between gender or by marital status. All children of deceased should inherit equally. There is no objection here why the protester should not inherit a share of her father's estate she asks only for ½ acre.

I find that she and all daughters of deceased ought to inherit. The protest is hereby allowed. The grant is confirmed and certificate issued to accommodate the protester by allocating her ½ acre as she prays.

No order as to costs.

It is so ordered.

Dated this 9th April, 2008

J. N. KHAMINWA

JUDGE

9/4/2008

Khaminwa – Judge

Njue – Clerk

Kellen – present

Read in open court.

J. N. KHAMINWA

JUDGE