



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT EMBU
Succession Case 958 of

IN THE MATTER OF THE ESTATE OF MKEA MWARANO...DSD

AND

NJERU MKEA.....PETITIONER

VERSUS

PAUL NJUE MKEA.....PROTESTER

RULING

Application for confirmation of grant filed on 28/12/1998 was heard on 15/11/2007. The parties gave evidence in open court. The application was opposed by Paul Njue Mkea who filed a protest on the ground that land parcel Gaturi/Nembure/1654 should be divided in two equal shares and each to each house and his house be registered in his name to hold in trust for his brother and 4 sisters named in the protest. There were 15 survivors including one widow who was still alive and 14 children of deceased both boys and daughters. The petitioner proposed that six (6) sons of the deceased from both houses to inherit each equal share (0.476 acres) and no inheritance for daughters. The petitioner stated on oath that all daughters are married and they do not wish to take any inheritance. Ephantus Mbaka Mkea gave evidence and said the land belongs to their mother who is still alive but all the children of deceased reside on the same land. Other children of the deceased addressing the court and emphasized that the land ought to be shared equally between all children.

Upon considering the issues arising I find that the deceased had two wives one is already dead. The surviving widow proposes to share the only asset of deceased being plot number Gaturi/Nembure/1654 equally among the six sons of deceased equally. She is entitled to do so under section 35 (2) read together with Section 40 (2). It is apparent that the land is small and the beneficiaries are many. Also the surviving wife (widow) has not made any claim for herself therefore the inheritance is to be taken by children. It is fair and reasonable in the circumstances of this case.

It is ordered therefore that the distribution of the land of deceased shall be in accordance with the proposal of the surviving widow. Protest has no merit. The grant is therefore confirmed and certificate shall issue in terms of the supporting affidavit by Appellant. Protest is hereby dismissed.

It is so ordered.

Dated this 8th April, 2008.

J. N. KHAMINWA

JUDGE

8/4/2008

Khaminwa- Judge

Njue – Clerk

Parties present

Read in open court.

J. N. KHAMINWA

JUDGE