



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA
AT EMBU

Civil Appeal 76

JOTHAM WAMBUGU KAGIRIKO.....APPELLANT

VERSUS

MOSES MUCHIRA.....RESPONDENT

JUDGMENT ON APPEAL

This is an appeal on a succession dispute. The Appellant filed the appeal against Resident Magistrate Judgment in Succession Case No. 186 of 2004 made on 11/11/2005 and sets out grounds of appeal:-

1. that the Trial Magistrate erred in holding that Respondent was entitled to inherit a portion of parcel No. Ngariama/Kabare/150.
2. when there was no evidence to show that both Respondents father and brother had own land.
3. there was no evidence to support the finding that the respondent was an unmarried daughter of deceased.
4. Trial Magistrate to consider that respondent and his mother have never resided, worked on or put any development on the suit land.

The right to inheritance is not determined on occupation of land or development or the marital status or a beneficiary. For these reasons grounds of appeal number 3 and 4 are without merit. From the record it appears the appellant was brother of the Respondents sister had died. The cause related to the estate of the petitioners father who was grandfather of the Respondent. The Trial court made a finding that the grandson who survived her deceased unmarried mother was entitled to inherit in place of his mother. The evidence of the Respondent shows that he was a responsibility of the grandfather's family. On material side Appellant educated the Respondent up to stand seven and brought the Respondent up. It therefore unreasonable for the petitioner Appellant to assert that the Respondent's mother was married to his biological father.

It is my view that this cause falls under section 41 where a child takes inheritance in place of his deceased parent. The deceased died on 23/7/82 and the daughter mother of the Respondent died in 1999.

Upon perusing the record and hearing the Appellant's arguments, I am satisfied that his appeal has no merit and the same is hereby dismissed with costs.

Dated this 22nd May, 2008.

J. N. KHAMINWA

JUDGE

22/5/2008

Khaminwa – Judge

Njue – Clerk

Ms Thungu HB for Wairimu

Mr. Moses Muchira present.

Ruling read in open court.

J. N. KHAMINWA

JUDGE