

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA
AT NYERI

Succession Cause 409 of 2004

WAIGERA DCD

AND

MARY WANJIKU MUCHEMI PETITIONER

JUDGMENT

The grant was issued in this matter in the joint names of the wives of the deceased namely Mary Wanjiku Muchemi and Jane Wangechi Muchemi. Jane Wangechi Muchemi applied for confirmation of grant and in respect of four properties proposed that the same be divided into two equal portions one for her and the other for her co-wife. However in respect of property Tetu/Karaihu/382 she proposed that the same be given to her house absolutely. That application for confirmation provoked protest from Mary Wanjiku Muchemi. The protest was heard by way of viva voce evidence. The protestor's evidence was that the deceased was a husband to both her and her co-administrator. That accordingly all properties should be shared equally between the two wives. She however confirmed that she married the deceased when she was old and that when she got married she found that properties were all in the deceased's name. She confirmed that she was not there when the properties were purchased. The evidence of Jane Wangechi Muchemi was that she was the first wife of the deceased. She confirmed that Mary Wanjiku Muchemi was the second wife. That she had been married to the deceased for many years. Parcel No. Tetu/Karaihu/382 was purchased from money given to her husband as dowry for her daughter. That daughter is called Teresa Njeri. She said that that was the basis upon which she was of the view that parcel No. 382 cannot be shared with Mary Wanjiku her co-wife. I have considered the evidence tendered by both sides. Jane Wangechi was very old as the court observed. Indeed she stated that her first born son was born in 1937. She was not able however to state when she was born. In comparison Mary Wanjiku was far much younger. The evidence given by Jane Wangechi that parcel No. 382 was purchased from dowry money of a daughter was not contradicted. For that reason I am of the view that her prayer that that property should not be shared with Mary Wanjiku is correct in view of that evidence. I therefore hereby dismiss Mary Wanjiku's affidavit of protest sworn on 22nd June 2007. I hereby confirm the grant herein as prayed in paragraph 5 of Jane Wangechi Muchemi's affidavit sworn on 22nd May 2007. There shall be no orders as to costs.

Dated and delivered at Nyeri this 22nd day of October 2008.

MARY KASANGO

JUDGE