



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NYERI
Succession Cause 268 of 2002

GATUIKI..... DCD

AND

JEDIDAH WAMAITHA GICHUHI.....PETITIONER

JUDGMENT

The two wives of Moses Gachuhi Gatuiki deceased Petitioned for the grant of letters of administration intestate. The grant was issued to both of them jointly on 3rd October 2003. An application was made by both of them for confirmation of grant dated 26th March 2008. The only asset of the estate is parcel No. Nyeri/Warazo/22. In the mode of distribution proposed by the administrator it was suggested that Jedidah Wamaitha Gichuhi to get 10.5 acres. Zipporah Wanja Gichuhi was to get 13.5 acres. That mode of distribution received the protest of John Gachuha Gichuhi. He in his affidavit of protest suggested that the property be distributed as provided in Sec. 40 of the Law of Succession Act. He proposed that the two wives of the deceased would receive 1 acre each. Thereafter the children he enumerated in his affidavit were to share equally in the remaining acres whereby each would get 2 acres. An affidavit was sworn by Andrew Kanyi who described himself as the cousin of the deceased. He deponed in that affidavit that the deceased sent for him on 16th July 2000. He according to that summoning went to the deceased home and found the family members present except those belonging to the house of the first wife Zipporah Wanja. He stated that they had been invited to attend but declined. The deceased then informed him his desire to make a will. Mr. Kanyi then wrote down what the deceased told him. It was written in the kikuyu language and the English translation was also annexed to his affidavit. In that document the deceased as it is alleged gave his first wife Zipporah 10 acres and to his second wife Jedidah 8 acres. He allocated to Moses Gichuhi Gatuiki 6 acres. To Kanyi Gichuhi he gave 1 acre. He retained 5 acres for himself but gave directions on how they were to be distributed between the two wives. Jedidah Wamaitha Gichuhi also swore an affidavit supporting the deposition of Andrew Kanyi. As I began this ruling I indicated that the Petitioners applied for Letters of Administration Intestate. It is now at this late stage that they wish to introduce the deceased Will. According to Section 11(c) provides that for a Will to be valid it has to be attested by two or more competent witnesses. The document that is now being introduced in that matter was assigned by a thumb print of the deceased and was witnessed by Andrew Kanyi. There was no other person who witnessed that Will. I therefore, declare that Will is invalid.

Having made that declaration the same cannot be relied in consideration of the distribution of this estate. Section 40 (1) provides as follows:

40. (1) Where an intestate has married more than once under any system of law permitting polygamy, his personal and household effects and the residue of the net intestate shall, in the first instance, be divided among the houses according to the number of children in each house, but also adding any wife surviving him as an additional unit to the number of children.

This Section provides the legal basis of distributing an estate where the deceased was married more than once. There is no reason which was advance against the application of this legal provision. Accordingly the protester does succeed and the Judgment of this Court is as follows:

1. That Zipporah Wanja Gichuhi and Jedidah Wamaitha Gichuhi to get a life interest of 1 acre each of LR. No. Nyeri/Waraza/22 and thereafter the same to go to their respective surviving children.

2. The balance of the acreage of Nyeri Waraza 22 to be shared equally amongst the following children of

the deceased.

a) Ndiritu Gichuhi

b) Stephen Gachugi Gichuhi

c) Mathenge Gichuhi

d) John Gachucha

e) John Kanyi

f) Charles Maina

g) Peter Njogo

h) Mary Wanjugu

i) Samuel Ndiritu

j) Jane Nyambura

k) Joseph Kahiro

3. There shall be no orders as to costs in respect of the protest.

Dated and delivered at Nyeri this 16th day of October 2008

MARY KASANGO

JUDGE