



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NYERI
Succession Cause 191A of 1998

IN THE MATTER OF THE ESTATE OF NM DECEASED

LWN..... 1ST PETITIONER

JMN..... 2ND PETITIONER

CMN 3RD PETITIONER

Versus

LNN 1ST PETITIONER

IMN 2ND PETITIONER

JUDGMENT

This judgment relates to the hearing of the affidavit of protest by I MN dated 2nd July 2007. The matter proceeded by way of viva voce evidence. At the hearing evidence was tendered by IMN in support of the protest. In his evidence he stated that the deceased was his father. He had two wives. The first one was PW and the second one was LW. The evidence of the protestor was not entirely clear to the court. The protestor stated that when his father was gravely ill he ordered that both houses slaughter goats for him. The slaughtering of those goats was to signify that the estate property was to be divided equally between the two houses. If that was a tribal custom, it was not clarified to the court. The protestor further stated that the consent annexed to the summons for confirmation was not signed by him and that the national identity card number appearing next to his name was not his ID. He showed the court his ID number which was seen to be number [PARTICULARS WITHHELD] He ended up his evidence by requesting the court to divide all the property in equal portions between the two wives. In his mother's house he said there were 6 sons and one daughter. The petitioner's case was supported by evidence of JM N. In his evidence the petitioner stated that it was the deceased wishes that the married daughters be given a portion of the land in case they were divorced by their husband. This witness stated that his testimony was on his behalf and on behalf of all the other parties who were present before court. As stated before, the evidence adduced did not come out clearly in order to assist the court to reach a decision in this matter. The court was left feeling that the advocate and the parties could have done more to enlighten the court. The protestor could have given evidence in depth to support his protest against confirmation of grant. The petitioner could also have assisted the court to determine the rightful shares of each beneficiary. The court got the impression that the petitioner was an unauthorized proxy for his married sisters. His intentions perhaps being that his married sisters land would eventually become his. The judgment of this court is that there is no evidence to support the protest raised by IMN. The same is dismissed with no order to costs.

Considering the summons for confirmation the evidence adduced was that one of the beneficiaries LNN is now deceased. He left surviving him his wife J H. There was also evidence that RWKi was a wife to one of the sons of the deceased. She is residing on the deceased land.

The only wife surviving the deceased is LW . In the summons for confirmation it was proposed that she would get 1.16 acres of the suit property. I am however of the view that she would only get a life interest over the suit property. Doing the best that I can with evidence presented before me I do hereby confirm the grant in the following terms:-

- [PARTICULARS WITHHELD] measuring 37 acres to be divided equally among the following;

1. JMN
2. CMN
3. JWN
4. CMN
5. DKN
6. JKN
7. JMN
8. SKN
9. IMN
10. RWK
11. JWW
12. JH
13. HMN
14. JGN

As stated before LW will only have a life interest over the suit property. Otherwise the suit property shall be divided amongst the beneficiaries as stated in this judgment.

Dated and delivered this 15th Day of December 2008

MARY KASANGO

JUDGE