



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAKURU**

**Succession Cause 481 of 2003**

**JOSPHAT MWAURA.....1<sup>ST</sup> PETITIONER**

**JANE MUTHONI MURAGE.....2<sup>ND</sup> PETITIONER**

**VERSUS**

**STEPHEN MAINA MURAGE.....PROTESTOR**

**RULING**

Josphat Murage Thuku (*hereinafter referred to as the deceased*) died on the 13<sup>th</sup> March 1999. On the 24<sup>th</sup> October 2003, Josphat Mwaura (*hereinafter referred to as the petitioner*), a son of the deceased, petitioned the court seeking to be granted letters of administration to administer the estate of the deceased. Apparently a disagreement arose between the petitioner and one Jane Muthoni Murage who claimed that she was a daughter of the deceased and was therefore entitled to administer the estate of the deceased. She filed a cross-petition seeking the orders of the court to be declared an administrator of the estate of the deceased. On the 29<sup>th</sup> March 2004, the petitioner and the said Jane Muthoni Murage agreed by consent to have the letters of administration in respect of the deceased's estate issued to both of them jointly. The said letters of administration were issued to the said Josphat Mwaura and Jane Muthoni Murage on the 16<sup>th</sup> July 2004. On the 12<sup>th</sup> May 2006, the administrators of the estate of the deceased applied to have the letters of administration which had been issued confirmed by the court. All the beneficiaries of the deceased's estate save for Stephen Maina Murage, agreed to the distribution of the only asset of the deceased's estate *i.e.* **LR No. Gilgil/Karunga Block 1/48 Kasambara.**

The said Stephen Maina Murage filed an affidavit in protest to the proposed distribution of the deceased's estate. In his affidavit, the said Stephen Maina Murage (*hereinafter referred to as the protestor*) deponed that he had contributed the sum of Kshs 1,500/= to the purchase of the only asset of the estate of the deceased. He deponed that his father (*the deceased*) had held a portion of the suit land equivalent to three shares (*i.e. each share measuring 3.95 acres*) in trust for him since the late Lord Delamere who sold the land to his father only recognised his employees. At the time the suit land was sold to the deceased, the protestor alleged that the deceased was working as a cook for the said Lord Delamere. The protestor was not an employee of the said Lord Delamere. The protestor annexed documents, which according to him, established that the members of his family had recognised that he was entitled to at least two shares out of the parcel of land which was to be registered in the name of the deceased.

At the hearing of the objection to the distribution proposed by the petitioners, Mr. Munene learned counsel for the protestor reiterated the contents of the affidavit sworn by the protestor. He submitted that the protestor was entitled to two shares each share being equivalent to 3.95 acres. He submitted that the protestor had contributed the sum of Kshs 1,500/= towards the purchase of the suit land which fact the family of the deceased was aware of. He argued that the deceased had held the said portions of land measuring approximately 8 acres in trust for him. He further argued that the protestor was already in possession and occupation of the said 8 acres on the ground.

Mr. Ngure, learned counsel for the administrators opposed the proposal made by the protestor as regard the distribution of the deceased's estate. In the first instance, he submitted that the protestor had come to court in abuse of the due process of the court. He submitted that the claim by the protestor that

the deceased held part of the suit land in trust for him could not be sustained since the protestor only raised the issue of trust eighteen (18) years after the death of the deceased. He submitted that the protestor had endorsed the application for the grant of letters of administration and had only raised the issue of trust during the distribution of the estate of the deceased in order to defeat the fair distribution of the estate of the deceased. He submitted that the petitioners had proposed that the only asset of the deceased be distributed equally between the houses that comprised the beneficiaries of the deceased. He was of the view that the proposal made by the petitioners was the most equitable and should be adopted by the court. He urged the court to disallow the proposal by the protestor. Josphat Mwaura, one of the administrators of the deceased's estate supported the position stated by Mr. Ngunjiri. He urged this court to adopt the proposed distribution of the deceased's estate as made by the petitioners.

I have read the pleadings filed by the parties in these succession proceedings. I have further carefully considered the rival submissions made by the parties to the said proceedings as relates to the distribution of the deceased's estate. The issue for determination by this court is whether the protestor has established that the deceased held two shares equivalent to 8 acres in trust for him. It is the protestor's case that he gave the deceased the sum of Kshs 1,500/= to purchase an equivalent of three shares in Kasambara farm when the late Lord Delamere sold the said parcel of land to his employees. The protestor argued that the said shares could not be registered in his name because at the material time *i.e* 1970 he was not an employee of the said late Lord Delamere. His late father was however then employed as a cook. The protestor argued that after the death of the deceased, his siblings acknowledged his entitlement to the said two shares when they signed an agreement before the elders who had been called at a meeting convened to discuss how the properties of the deceased would be distributed in year the 1994. The protestor annexed the minutes of the said meeting which he claims the beneficiaries of the deceased had agreed that he was to get the said shares equivalent to 8 acres. The petitioners have however submitted that the protestor raised the issue of trust when it is already too late. They have argued that the protestor never raised the issue of trust during the life-time of the deceased. They therefore urged the court to disallow the claim of trust made by the protestor.

I have carefully evaluated the facts of this case. It is clear to this court that the protestor never made any claim that he had contributed to the purchase of the suit land when the deceased was alive. There is no document which was produced in evidence in which the deceased acknowledged receiving the said sum of Kshs 1,500/= from the protestor when the said suit land was purchased. The deceased did not write a will or give an oral will intimating that he had received the said sum of money from the protestor when he purchased the suit land. It is only after the death of the deceased that the protestor made the claim that the deceased held shares equivalent to 8 acres in his trust. Although the protestor has annexed minutes of an alleged meeting which was held by the family members in the year 1994 with a view of distributing the estate of the deceased, it is clear that the said minutes confirmed the fact that there existed no document in which the deceased noted the contribution made by the protestor towards the purchase of the suit land. Even if this court were inclined to hold that indeed the deceased held the said shares in trust for the protestor, such a claim cannot be ventilated in succession proceedings. In any event, such a claim would be barred by statute due to the fact that the protestor raised the same eighteen (18) years after the death of the deceased.

In the premises therefore, it is clear from the foregoing reasons that the proposed distribution of the deceased's estate made by the protestor cannot succeed. It is hereby disallowed. I hereby hold that the distribution proposed by the petitioners as contained in the consent to distribute filed in court on the 12<sup>th</sup> May 2006 and signed by all the beneficiaries except the protestor is the mode of distribution that will be adopted by the court. The petitioners are therefore at liberty to fix the application for confirmation of grant for hearing before this court. Since the dispute involved family members, there shall be orders as to costs.

**DATED at NAKURU this 9<sup>th</sup> day of May 2007.**

**L. KIMARU**

**JUDGE**