



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

Succession Cause 88 of 2005

IN THE MATTER OF ESTATE OF HESBON NJAGI WAMBUGU-DECEASED

AND

ALICE MUMBI NJAGI.....PETITIONER

VERSUS

GLADYS WANJIRU NJONJWE.....PROTESTOR

RULING

Before the court there is an application in Form 108 for the confirmation of grant filed by Alice Mwimbi Njagi. She is the administrator of deceased. In support of summons for confirmation she has filed affidavit sworn on the same date.

She has set out the names of survivors of deceased. She has also written down her proposals on the distribution of the estate.

On 21/9/2006 three persons:

1. James Mwaniki Gatumu
2. John Mugo Kirindi
3. Bedan Chomba Gachoki filed an affidavit of protest against the confirmation of the grant. They were claiming purchaser's interest and have exhibited a copy of sale agreement they entered into with the administrator evidencing that transaction. Again on 3rd October 2006 another affidavit by Gladys Wanjiru Njonjwe was filed protesting the sale of that land. Thereafter the protest filed on 21/9/2006 by the three protestors was withdrawn on 11/12/2006. On 15/4/2007 an amended Form 9 was filed by Applicant. Thereafter a hearing of protest filed by Gladys Wanjiru Njonjwe took place. This protest objects because the land parcel **Ngariama/Rungeto/154** belonged to her husband and she is the one who should be administering the estate of her husband instead of her daughter in law the applicant and that she was protesting the sale by the Applicant.

Firstly it is to be noted that the green card in respect of this land shows that the original owner was **NJONJWE MUNGAI** registered proprietor on 10/8/57 but that on 4/9/80 Esbon Njagi was registered as proprietor in succession. On the same day Gladys Wanjiru w/o Njonjwe was registered as having life interest on that parcel of land the whole for it. The evidence shows that deceased Hesbon Njagi Wambugu is the son of protester and there was a succession case in the estate of his father Njonjwe

Mungai deceased.

It is my finding therefore Esbon held the title of the parcel of land subject to the life interest of his mother the protester. The land is not available for distribution until the termination of her life interest.

I therefore find that the application of confirmation of the grant as far as the parcel number **Ngariama/Rungeto/154** is concerned is not justified. She may exercise until her life interest is terminated. She has power of appointment as granted under 34 (2) Succession Act Cap. 160 which she may exercise as she desires in the circumstances. The Application is dismissed with no order as to costs.

Dated this 31st July, 2007.

J. N. KHAMINWA

JUDGE

31/7/2007

Khaminwa – Judge

Njue – Clerk

Gladys Wanjiru Njonjwe

protester present in person

Ruling read in their presence in open court.

J. N. KHAMINWA

JUDGE