



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

Succession Cause 181 of 2005

IN THE MATTER OF THE ESTATE OF DAVID NJIRU NJERUDECEASED

AND

CATHERINE WANJIKU KIURA..... PETITIONER

VERSUS

RAEL CIUMWARI.....OBJECTOR

RULING

Cathrine Wanjiku Kiura petitioned for a grant of Letters of Administration Intestate in the estate of her deceased husband. The petition was filed on 29/6/2005.

However Rael Ciumwari Raban who had filed a Caveat under P&A rules made a cross petition which was resolved and a joint grant was issued by this court on 24/10/2005.

On 19/9/2006 the joint administrator applied by summons for the confirmation of the grant. This application of was drawn and filed to the advocate for the parties Fatuma Wanjiku & Co.

On 18/9/2006 Cathrine Wanjiru Kiura filed a summons for confirmation of grant in her own name and excluding the co- administrator. She made her proposals as to the distribution of the assets. However by affidavit sworn on 3/10/2006 the Co-administrator Rael Ciumwari Raban protested to the application made by her Co-administrator she also made her proposals for distribution. The protest was heard in open court protester was represented by advocate Fatuma. She gave evidence she supported her protest saying she has 4 children while her co-administrator has 2. She said there was a dispute on distribution of the estate part of which is gratuity money from Administration Police Department. She claimed 60% of the money saying she had more children. The protester said that the **Plot No.Ngandori/Nguviu/T1** belongs to their father in- law but she also said that the first wife resides on that land and cultivates tea there. No document of title has been exhibited regarding ownership of this land.

From the affidavit in support sworn by Cathrine Wanjiku there is another asset disclosed being Kathangariri Tea account 02 No.36. This is not distributed. The law regarding distribution of an intestate is provided under part V of the Succession Act Section 40 of which deals with polygamous families which comprise of more than one wife. This is the situation here. It is agreed that the deceased left 2 wives first with 2 children and second with 4 children.

Firstly the net estate shall be divided among the houses according to the number of children in each house. Distribution within each house is as provided under section 35 to 38 of the Act. Section 35

provided for distribution in the case of one surviving wife and children. Section 36 provides for cases where one surviving spouse and no children, Section 37 provides for powers of spouse during life interest and Section 38 provides for where only surviving children are left.

In the present case each house has a wife surviving the deceased and children. Therefore the estate is to be divided into two. Elder wife (Protester) shall take 5 parts while Cathrine with her 2 children shall take 3 parts of the assets, and in each house wife will take life interest in the whole residue of intestate estate in her house.

Therefore the administrators shall file a fresh affidavit showing the shares of all beneficiaries. The interest of minor beneficiary shall be held in trust by the administrators. Application for confirmation of grant shall be adjourned to await fresh affidavit aforesaid.

Dated this 5th July, 2007.

Mention on 20/7/2007.

J. N. KHAMINWA

JUDGE

5/7/2007

Khaminwa – Judge

Njue – Clerk

Cathrine Wanjiku petitioner present

Ruling read in open court.

J. N. KHAMINWA

JUDGE