

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT EMBU

Succession Cause 339 of 2005

IN THE MATTER OF THE ESTATE OF NJIRO MURATHI

ALIAS NJIRU MURATHI.....ECEASED

AND

ANN KABUCHA NJIRU.....PETITIONER

RULING

Nyaga Wachira and Jacinta Wambugi filed protest against confirmation of grant as applied by Administrator. The protesters say the deceased had two wives and the estate should be distributed between the two houses of the widows. There is evidence of the instructions deceased issued in his life time. The deceased died on 26/2/1997. He had distributed the land except for small portion measuring 3.25 acres.

In the house of first wife Ann Kavuca there were 6 sons and 2 daughters. In the second house the wife was deceased Muthanje Njiru who had 2 children Jacinta Wambugi and Nyaga Wachira. The evidence is that the two wives were not living at the same time. There is dispute on distribution of the estate. The assets comprise of 2 pieces of land viz:-

1. Land parcel Ngandori/Nguviu measuring 0.86 Ha.
2. Ngandori/Kigumo/241 measuring 5.56 ha.

There is filed a protest against confirmation by Nyaga Wachira and Jacinta Wambui these are the children of the deceased wife of the deceased. The protest is because the Administrator does not intend to distribute the estate equally between both houses. However protesters are not given any land. There is evidence that the deceased had distributed his land during his lifetime leaving some 3.25 acres undistributed. There was a committee to discuss the distribution but these persons were applicants friends not all were elders of the clan and their discussions were much later after death. They were therefore discussing the applicant's proposal.

It is my finding that since the first wife left children behind and the deceased did not acquire additional wife the rest of his life he was not of polygamous nature I find he was a monogamous man. Distribution should therefore fall under section 35 Succession Act. His estate not distributed was in the hands of the widow, the applicant who has a life interest of her husband assets. When her interest terminates on death the estate shall be taken by all children in equal shares. Section 42 of Succession Act provides that if the deceased has distributed his assets during his life time the beneficiaries shall account for such gifts during distributions. What comes out here is that the deceased distributed his land during his life time and left a piece which widow intends to distribute she proposes to give titles to the land for each of the sons 2.10 acres. The undistributed portion of 3.25 acres, she proposes to keep to herself. She expressed strong views against distribution to the second protester only on ground that she is a girl, although she has proposed giving some female beneficiaries land.

I have considered this matter, the affidavit shows that there are daughters in the estate:-

1. Lucy Wambui Mwaniki described as daughter in law.
2. Jacinta Wambui (2nd protester)
3. Mary Wanjira.

Only Lucy Wambui is given some portion of inheritance. It is my finding that the Jacinta Wambui should inherit and also Mary Wanjira. The law does not discriminate between sexes.

It appears to me that the deceased had not wished to divide his land equally according to the two houses. I find the evidence that his first wife died a long time ago. The deceased had not taken another wife and therefore he considered himself having only one wife.

I therefore find that his intention was to leave the 3.25 acres for use by his surviving wife during her life time. She will hold the land therefore for herself and interest of two females Jacinta and Mary who shall take equal shares on her death on termination of interest.

It is ordered so.

Dated this 15th October, 2007.

J. N. KHAMINWA

JUDGE