



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT EMBU

Succession Cause 550 of 2002

IN THE MATTER OF THE ESTATE OF NDAMBI MWARARI (DECEASED)

CHARITY WANJUKI NDAMBI.....PETITIONER

VERSUS

JANE RWAMBA JOSPHAT.....OBJECTOR

JUDGMENT

Application dated 22/6/2004 the Administrator seeks confirmation of her grant issued to her on 22/6/2001 to enable her to distribute the estate. The identity of the surviving children of deceased are listed as seven. One Cyrus Njagi Kinywa listed as eighth son has been removed from that list after it was found that he was an outsider who is said to have financially helped the administration included in the list are two wives of the deceased's son Josphat Nthiga Ndambi now deceased.

The administrator proposes to distribute to the two widows one of the two plots **No. Gaturi/Nembure/6231** to share equality. These women have 7 children between them.

The other asset of the deceased is Plot **No. Gaturi/Nembure/6232** to be shared in certain proportions by the 8 sons and the administrator. To the application objection was taken by **JANE RWAMBA JOSEPHAT** one of the widows of the deceased son. She complaint that she was not consulted at the time of discussing on the distribution of the assets and that the estate has been distributed unequally and that a person not entitled to inherit has been included on the distribution (namely Cyrus Njage Kinyua) he has already been removed. That deceased son Josephat has been allotted a smaller portion than sons.

Evidence was taken from both sides. The objector stated that she resides in Mwea where she works. On her first objection this is conceded by the Administrator and therefore the 0.20 Ha is left over unallocated she confirmed that her father in law had subdivided his land before he died but she did not know for what purpose. She claimed a portion measuring 0.090 hectare and suggested that her Co-wife should get a similar portion of the land. According to the record plot No. 6231 is measuring 0.10 ha.

The evidence of the administrator shows that the deceased had started the process of the registration of his son Josephat as proprietor of the plot of the plot No. 6231 which was subdivided from family land. Indeed the land control Board had given consent as shown by exhibits 1 & 2 on 14.2.1990.

Considering the proposal of distribution it appears all sons are allocated 0.15 ha out of plot No. 6232 and the mother (administrator) similar portion (0.15 Ha) Plot No. 6231 is measuring 0.10 Ha Section 42 law of Succession Act provides that gifts given or property settled to a beneficiary a child or grandchild shall be taken into account determining distribution of the net intestate estate, finally accruing to the beneficiary. In this case I find there is evidence that the deceased had in his lifetime allocated a share of

his land to his son Josephat being plot No. 6231 which measures 0.10 hectare. This is to be taken into account in determining the final inheritance by that son now deceased.

Therefore the inheritance of Josephat is the Plot No. 6231 plus another portion out of plot No. 6232 measuring 0.05 Ha. to equalize with other sons. The widows of the deceased son shall therefore take 0.15 Ha in total to be shared equally among them. There will be remaining 0.15 Ha out of plot No. 6232. This piece of land shall remain with the administrator out of which she shall convert into money to meet the expenses of administration of estate.

The grant is therefore confirmed subject to the distribution as above.

Orders accordingly. Certificate of confirmation is issued.

Dated this 30th May, 2006.

J. N. KHAMINWA

JUDGE

30/5/2006

Khaminwa –Judge

Njue Clerk

Mr. Gitonga -Present

Objector and petitioner – Present

Ruling read in their presence.

J .N. KHAMINWA

JUDGE