



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)**

Succession Cause 1 of 2006

IN THE MATTER OF THE ESTATE OF IRUNGU GATHUA – DECEASED

JOYCE NJERI IRUNGU APPELLANT

VERSUS

MUTHONI IRUNGU RESPONDENT

JUDGEMENT

The Appellant Joyce Njeri Irungu has filed this appeal in person and she also prosecuted the same similarly. The Respondent followed her suit also.

Any way, the Appellant being aggrieved by the judgment and order of the Learned Senior Resident Magistrate S. Mokuia delivered in Succession Cause No.80 of 1996 before Senior Resident Magistrate's Court at Thika.

Her grounds for appeal are:

- 1. THAT the Learned Trial Magistrate erred in law and in fact by allowing the Petitioner to administer the Estate of the Deceased and distribute the same among the beneficiaries equally among the sons and unmarried daughters.**
- 2. THAT the Learned Trial Magistrate erred in law and fact by finding that Respondent is the legible administrator of the deceased's Estate whereas she long abandoned the deceased and the children of their marriage.**
- 3. THAT the Trial Magistrate erred in law and fact in finding that the Respondent should share equally with other beneficiaries.**
- 4. THAT the Learned Magistrate erred in law and fact in finding that married daughters should not benefit from the deceased's estate.**
- 5. THAT the Learned Magistrate erred in law and fact by failing to appreciate the evidence that the Respondent was only entitled to a share as delineated by the deceased during his life.**
- 6. THAT the Learned Trial Magistrate erred in law and fact by including on the list of beneficiaries children not fathered by the deceased.**

Those grounds can be condensed into two grounds namely:

- 1. Whether the Learned Magistrate erred in law and in fact that the Respondent was the proper person in law to be appointed as an Administratrix and**
- 2. whether equal distribution amongst the beneficiaries listed, amongst them were married daughters and those not sired by the deceased was against the law and fact of the case.**

The Appellant submitted that she was the second born of the family and that the Respondent who is her mother deserted the home and got married to another man. According to her she has sufficiently proved that fact. She also submitted that the deceased, her father, had asked her to hold the property in trust for his children.

The Respondent denied that she ever left the home and got married as alleged.

This is a first appeal and thus I am obligated to review the judgment on the facts adduced in evidence and on the points of law.

While evaluating the evidence, I should only be aware that the learned Trial Magistrate has had the opportunity to see and watch the demeanors of the witnesses before him.

In her evidence before the subordinate court, the Appellant stated in her cross-examination that the Respondent was with the deceased when he became sick and that she was the wife of the Deceased and was close to him. She did not produce any evidence in support for her contention that the deceased asked her to hold the land in trust of his children. According to her the grant of letters of Administration should have been given to her and the land be apportioned in five shares. Although in her affidavit of protest she has proposed that the Respondent be given 1 acre along with her three brothers and herself and one Patricia Wanjiru be given ½ acre, in her evidence before the trial court she did not include the name of the Respondent.

She did not raise any issue regarding the children who were not sired by the deceased and were included in the list of beneficiaries.

Her witness talked about the deceased putting in writing the details of his properties in an exercise book, however, the same was not produced. What he really stated was that the Appellant be named as one of the Administrators.

The two witnesses called by the Respondent denied that the deceased had only six children and both stated that the Respondent was the wife of the deceased. This fact, I must reiterate, also is agreed by the Appellant in her cross-examination. The two witnesses stated that the deceased left the property in care of the Respondent.

With this evidence, judgment was delivered on 7th December, 2005.

After considering the evidence, the Learned Magistrate held that the Respondent shall administer the estate and distribute the same equally amongst all the children including unmarried daughters.

The Learned Magistrate, after ordering as aforesaid, did not try to establish who are the beneficiaries and before that ascertainment was made, issued a certificate of confirmation of grant dated 11th January, 2006 and bequeathed the property, i.e. Plot No.272 Ithanga phase VI Settlement Scheme, wholly to the Respondent.

Obviously, the Learned Magistrate, with due respect, erred in law and in fact by issuing the aforesaid certificate of confirmation.

I shall thus partially allow the appeal and set aside and revoke the certificate of confirmation dated 11th

January, 2006 issued in the Succession Cause No.80 of 1996 at Senior Resident Magistrate's Court Thika and direct that the grant of representation be issued in the names of the Appellant and the Respondent.

I further direct that the Subordinate court shall establish the identification of the beneficiaries of the estate and then issue a certificate of confirmation of grant after hearing all the parties.

I shall not make order of costs.

Dated and signed at Nairobi this 18th day of July, 2006.

K.H. RAWAL

JUDGE

18.7.06