



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA
AT NYERI

Succession Cause 191 A of 1998

LOISE WAMBUI NJOROGE 1ST PETITIONER

JACOB MWANGI NJOROGE 2ND PETITIONER

CHARLES MWANGI NJOROGE 3RD PETITIONER

Versus

LAWRENCE NDAGUATHA NJOROGE 1ST PETITIONER

ISAACK MURIU NJOROGE 2ND PETITIONER

JUDGMENT

This judgment relates to the hearing of the affidavit of protest by Isaack Muriu Njoroge dated 2nd July 2007. The matter proceeded by way of viva voce evidence. At the hearing evidence was tendered by Isaack Muriu Njoroge in support of the protest. In his evidence he stated that the deceased was his father. He had two wives. The first one was Peris Wanjiku and the second one was Loise Wambui. The evidence of the protestor was not entirely clear to the court. The protestor stated that when his father was gravely ill he ordered that both houses slaughter goats for him. The slaughtering of those goats was to signify that the estate property was to be divided equally between the two houses. If that was a tribal custom, it was not clarified to the court. The protestor further stated that the consent annexed to the summons for confirmation was not signed by him and that the national identity card number appearing next to his name was not his ID. He showed the court his ID number which was seen to be number 2460583. He ended up his evidence by requesting the court to divide all the property in equal portions between the two wives. In his mother's house he said there were 6 sons and one daughter. The petitioner's case was supported by evidence of Jacob Mwangi Njoroge. In his evidence the petitioner stated that it was the deceased wishes that the married daughters be given a portion of the land in case they were divorced by their husband. This witness stated that his testimony was on his behalf and on behalf of all the other parties who were present before court. As stated before, the evidence adduced did not come out clearly in order to assist the court to reach a decision in this matter. The court was left feeling that the advocate and the parties could have done more to enlighten the court. The protestor could have given evidence in depth to support his protest against confirmation of grant. The petitioner could also have assisted the court to determine the rightful shares of each beneficiary. The court got the impression that the petitioner was an unauthorized proxy for his married sisters. His intentions perhaps being that his married sisters land would eventually become his. The judgment of this court is that there

is no evidence to support the protest raised by Isaac Muriu Njoroge. The same is dismissed with no order to costs.

Considering the summons for confirmation the evidence adduced was that one of the beneficiaries Lawrence Ndaguatha Njoroge is now deceased. He left surviving him his wife Judy Hiuko. There was also evidence that Regina Wathenya Kiruki was a wife to one of the sons of the deceased. She is residing on the deceased land.

The only wife surviving the deceased is Loise Wambui. In the summons for confirmation it was proposed that she would get 1.16 acres of the suit property. I am however of the view that she would only get a life interest over the suit property. Doing the best that I can with evidence presented before me I do hereby confirm the grant in the following terms:-

· WARAZO/NYERI/102 measuring 37 acres to be divided equally among the following;

1. Jacob Mwangi Njoroge
2. Charles Mwangi Njoroge
3. Joseph Wanguya Njoroge
4. Christopher Macharia Njoroge
5. Daniel Kiruki Njoroge
6. John Kibui Njoroge
7. James Muchiri Njoroge
8. Simon Kariuki Njoroge
9. Isaac Muriu Njoroge
10. Regina Wathenya Kiruki
11. James Waititu Waithaka
12. Judy Hiuko
13. Hosea Muita Njoroge
14. Joseph Githae Njoroge

As stated before Loise Wambui will only have a life interest over the suit property. Otherwise the suit property shall be divided amongst the beneficiaries as stated in this judgment.

Dated and delivered this 15th Day of December 2008

MARY KASANGO

JUDGE