



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT EMBU

SUCCESSION CASE NO. 544 OF 2002

MUMBURA MACHARIADECEASED

AND

ELODIAN WANJUKI MUMBURA PETITIONER

ANNA WANJIRA NYAMBURAPROTESTER

RULING

1. The matter herein is to my mind quite simple; the two wives of the late Mumbura Macharia cannot agree on how his estate should be distributed. The lower court had on 18/11/1994 ordered that the two be appointed as joint administrators of the estate. Elodian Wanjuki Mumbura proposes that the properties should be divided equally amongst the nine sons of the deceased and the remainder to be given to the wives and daughters in equal shares to be held by the wives. Anna Wanjira Mumbura wishes that the property be shared out equally between herself and her co-wife.

2. What does the law say? Where the deceased has two wives (and it is agreed that despite her separation with the deceased, Anna Wanjira Mumbura is still a wife), then the property should be shared out equally between the wives. Section 40(1) of Cap. 160 provides that where an intestate was polygamous, then his personal and household effects and the residue of his estate shall be shared out equally amongst the houses according to the number of children in the houses. If the property is agricultural land, then under section 32 and 33 of Cap. 160, customary law shall be invoked in the distribution thereof.

3. I have seen the list of assets contained in the deceased's estate and they include three parcels of land and some motor-vehicles. I have also heard the parties and noted that Anna Wanjira Mumbura left her children to be tended to by Elodian Mumbura since 1996. I have also noted that in her proposed distribution of the estate, Elodian followed the wishes of the deceased. Anna Wanjira and all her children have been treated equally to the children of Elodian Mumbura. They were not disinherited inspite of the lengthy separation with the deceased. I have heard no protest from the rest of the family save Anna Wanjira Mumbura. Each case should be treated on its own merits inspite of SS. 32 and 33 of the Act.

4. I do not see any reason to disturb the orderly arrangement reached by the deceased and his family save for the estranged protester, Anna Wanjira Mumbura. The Protester has given no urgent reason why I should do so.

5. I shall overrule the protest and order that the grant herein be listed for confirmation in terms of the proposal by Elodian Mumbura save that the motor vehicles belonging to the deceased and his bank

accounts be added to the schedule of assets.

6. Mention on a date to be agreed to confirm compliance with the latter orders above.

No order is made as to the costs.

Orders accordingly.

Read in Open Court this 3rd day of February 2005

I. LENAOLA

JUDGE

In the Presence of;

Mr. Kathungu for Petitioner

Protester in person

I. LENAOLA

JUDGE