



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

Succession Cause 148 of 1995

IN THE MATTER OF THE ESTATE OF NEBART M'BIRICHI KIROMBI

ALIAS KAGWARO BIRICHI KIRUMBI (DECEASED)

AMOS MUTEGI NEBART ..... PETITIONER

VERSUS

MANENE MUGUONGO ..... APPLICANT

RULING OF THE COURT

Letters of Administration Intestate of the estate of the late Nebart M'Birichi Kirombi were issued to the petitioner herein on 11.12.95. By an application dated 6.1.2004, the petitioner sought to have the said grant confirmed in accordance with the provisions of the Law of Succession Act.

The affidavit in support of the summons for confirmation gave details of the survivors of the deceased. The applicant was not one of them. The same affidavit which was sworn by the petitioner also detailed out the proposed distribution of the deceased's estate among the six survivors of the deceased Nebart M'Birichi Kirombi.

Then on 2.3.2004, the applicant herein filed an application under the provisions of section 26 of the Law of Succession Act and Rule 45(1) of the Probate and Administration Rules praying for provision for himself as a dependant of the deceased.

The reasons the applicant gives for asking for a share of the deceased estate are contained at paragraph 6 of the supporting affidavit made and sworn by the applicant on 1.3.2004 which paragraph reads as follows:-

**“6. That my relationship to the deceased is as follows:-**

**(a) My biological father was called Muguongo Kirombi (deceased) and was a biological brother to the deceased in these proceedings and were residing and farming on LR KARINGANI/MUGIRIRWA/560 and GITARENE/1030 during their life time.”**

He goes on to depone that after the death of his own father, the applicant was left under the care and custody of the deceased herein and that he has resided on LR KARINGANI/MUGIRIRWA/560, and that before the deceased died, he did bequeath the said parcel No. KARINGANI/MUGIRIRWA/560 to the applicant.

At the hearing of the application, the applicant informed the court he wholly relied on the said affidavit

and on the further affidavit of protest against confirmation of grant filed in court on 11.5.2004. In those affidavits the deponent avers that the petitioner has totally excluded the applicant from the distribution of the deceased's estate and also depones that the application for confirmation is defective in that the same does not comply with the provisions of Rule 40(1) of the Probate and Administration Rules.

The application is opposed. In the Replying Affidavit dated 19.4.2004 and filed in court on 27.4.2004, the petitioner denies the applicant's alleged relationship with the deceased, though he admits that the applicant's father was a distant cousin of the deceased. The petitioner also dismissed the allegation by the applicant that the deceased had given parcel number KARINGANI/MUGIRIRWA/560 to the applicant as being an empty falsehood.

I have considered the applicant's application which was filed nearly ten (10) years after the grant was issued to the petitioner in light of the applicable law and find that the same lacks merit. Section 26 of the Law of Succession Act Cap 160, under which the applicant has moved the court provides that this court can make an order for a dependants, if it is of the opinion that:-

- (i) The disposition of the deceased's estate effected by his will or,
- (ii) By gift in contemplation of death or,
- (iii) The law relating to intestacy or
- (iv) The combination of the will, the gift and law,

is not such as to make reasonable provisions for that dependant. The applicant herein has not proved to the court that he was a dependant of the deceased. Secondly, he has not proved that the deceased gave him as a gift, land parcel No. KARINGANI/MUGIRIRWA/560 in anticipation of the death.

I agree with counsel for the petitioner that the applicants allegations are mere empty words without substance. I also concur with counsel for the petitioner that the applicant's application is an after thought. Why did he wait for nearly ten years to come to court for what he believes rightly belonged to him? The applicant has not alleged that the filing of the succession cause was shrouded in secrecy, nor has he alleged that the petitioner acted fraudulently.

The applicant alleges that the petitioner's application for confirmation of grant is defective. His own application is equally defective, but that is not the main point here. The point I am making is that the applicant's application has no merit and no substance. The applicant is a mere busy body whose interest in the deceased's estate is far fetched. In my opinion therefore, it is not expedient to make a provision for the applicant who has failed to prove that he was a dependant of the deceased.

Accordingly, the applicant's application dated 1.3.2004 is dismissed with costs to the petitioner.

I proceed to allow the petitioner's application dated 6.1.2004 and order that the grant of representation issued to the petitioner on 11.12.1995 be confirmed. The distribution of the deceased's estate, namely KARINGANI/GITARENE/1030 be shared out as follows:-

- (a) G K N – 0.75 acres
- (b) A J M– 0.75 acres
- (c) S G N– 0.75 acres
- (d) J M M' – 0.75 acres
- (e) E M N – 0.75 acres

(f) W M N – 0.75 acres

It is so ordered.

Dated and delivered at Meru this 16th day of May, 2005.

**RUTH N. SITATI**

**JUDGE**

**16.5.2005**