



**In re Estate of Wamuhu Murimi (Deceased) (Succession Cause 460 of 2002)  
[2005] KEHC 837 (KLR) (Family) (16 September 2005) (Judgment)**

*In Re the Estate of Wamuhu Murimi (Deceased) [2005] eKLR*

Neutral citation: [2005] KEHC 837 (KLR)

**REPUBLIC OF KENYA**

**IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**FAMILY**

**SUCCESSION CAUSE 460 OF 2002**

**MK KOOME, J**

**SEPTEMBER 16, 2005**

**IN THE MATTER OF THE ESTATE OF WAMUHU MURIMI (DECEASED)**

**JUDGMENT**

1. By a Ruling made on 16th day of December 2003, Hon. Waweru J. set aside the Certificate of Confirmation in Succession Case No. 305 of 1995 issued on 1st November 1996 to Murimi Mugecha. However, the Grant of Letters of Administration was left intact and the Applicant was allowed to file an affidavit of protest in order to join issues in regard to the distribution.
2. The Objector Anna Njeri Kahenya filed the affidavit of protest sworn on 12th October 2004 and filed on 1st March 2005.
3. According to the Objector, the deceased was her aunt, she was survived by a nephew the Administrator and three nieces. The deceased had no biological children of her own and was not married. Therefore the Objector argued that she stood on equal rank with the Administrator and she is also entitled to the deceased estate.
4. In addition to the affidavit of protest the Objectors have adduced oral evidence and gave an account of how the deceased was chased away from Kiambu by the Administrator and was forced to stay with the Objector at the Ngoliba plot No. 497 which was occupied by the Objector. It is the Objector who looked after the deceased until she died. The protester further testified that the deceased bequeathed to her the property known as Kariobangi High Rise Plot No. H/133 containing of 8 rooms as well as the Ngoliba Plot No. 497, Ngoliba Farm. According to the protester the deceased had bequeathed other properties to the Administrator and assisted her other two sisters to buy plots and that they are not entitled to inherit the remaining properties.
5. The protester filed an affidavit on 22/6/05 in the middle of the hearing which affidavit was not filed with the leave of the court. This affidavit is not admissible and is hereby struck off the records.



6. The Administrator gave evidence in support of the application for confirmation. He claims that he left out the protester in the list of Beneficiaries because according to him the protester is married and should not be considered to inherit from the deceased estate. He cited the Kikuyu customary law that excludes married daughters from inheriting from their parents. The Administrator however has considered his two other sisters who have children but are not married.
7. I have carefully considered the evidence adduced by all the parties and the affidavits filed by the Protester. The Protester did not present any evidence to show that the deceased bequeathed to her the properties. The deceased died intestate and as per the provisions of Section 3 of the Law of Succession which provides guidance as to how the estate where an intestate has left no surviving spouse or children should be determined.
8. The deceased herein died in the November 1994 and thus the law applicable in the determination of her estate is the Law of Succession Act Cap 160 and not the Kikuyu customary law, Section 39 (1) provides:  

“ where an intestate has left no surviving spouse or children, the net intestate shall devolve upon the kindred of the intestate in the following order of priority

  - a) father; or if dead
  - b) mother; or if dead
  - c) brother and sisters, and any child or children of deceased brothers or sisters in equal shares: of if one.....
9. According to the above provision the deceased estate should be shared equally among her nephews and nieces in equal shares their gender or marital status notwithstanding.
10. Accordingly, the Grant of Letters of Administration may be confirmed and the deceased estate be shared amongst the following in equal shares:
  1. Murimi Mugecha
  2. Ruth Wamuhu Mburu
  3. Njeri Mugecha
  4. Ann Njeri Kahenya
11. This being a family dispute, each party should bear their own costs of the litigation.
12. It is so ordered.

**JUDGMENT READ AND SIGNED ON 16TH SEPTEMBER 2005.**

**MARTHA KOOME**

**JUDGE**

