

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL APPEAL NO. 430 OF 2001

GIKONYO MUCHERUAPPELLANT

VERSUS

MBUTHIA MWANGI RESPONDENT

{An appeal from the Judgment and Decree of the Senior Principal Magistrate F.F. WANJIKU (MISS) in original Muranga S.P.M.C. Succession Cause No.59 of 1997}

JUDGMENT

This is an appeal against the decision of the P.M. in Muranga Succession Cause No.59 of 1997, in which she held that the Respondent herein was the rightful beneficiary of the estate of the late Njagi Njaku.

The Memorandum of Appeal filed sets out 9 grounds of appeal. The Petitioner who obtained Letters of Administration to the deceased's estate claimed to be a step brother of the deceased and therefore entitled to inherit the deceased's estate. The Learned Magistrate in her Judgment found that the Respondent herein was a son of the daughter of the deceased and as such is a blood relative of the deceased entitled to the estate under the Law of Succession Act (The Act) she also found that the Appellant had no blood relationship with the deceased and the issue of their being in the same clan does not even arise.

The Appellant attacks these findings on the grounds that the provisions of the Act are not applicable and that Kikuyu Customary Law applied. She was also wrong in failing to consider the inheritance position of married woman in the Kikuyu Customary Law. Also for the Respondent could inherit through his mother. She also erred in not holding the land was clan land and that the Appellant had acquired rights by day of adverse possession. This last ground formed no part of the Application for confirmation of grant. If true, the Appellant must seek his remedy elsewhere in this respect. So far as the application of the Act is concerned, the deceased died after the Commencement of the Act and his estate is governed by it. The application of Customary Law only becomes relevant where some well established custom is said to apply *e.g. Muramata*.

In this matter I can see no area where customary Law is relevant. No custom was established or proved to say that on the death of a person whose sole heir is a married woman the land reverts to the clan. In my view the Magistrate was perfectly within her right to apply the provisions of the Act to this estate and I hold that the deceased's property devolved upon his daughter and on her death to her son the Respondent herein.

I can see no in misdirection in the Judgment of the Magistrate, which in my view rightly decided the matter in favour of the Respondent.

In the result I dismiss this appeal with costs to the Applicant.

Dated and delivered at Nairobi this 4th day of December 2003

P.J. RANSLEY

JUDGE