



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

H. C. SUCCESSION CAUSE NO. 1725 OF 1997

IN THE MATTER OF THE ESTATE OF MUGURE GACHANJA –

DECEASED

M N K..... PETITIONER

V E R S U S

J N W...

P K W...

P N W A.....OBJECTORS

W N W...

J U D G M E N T

M NK the daughter of the deceased Mugure Gachanja has filed the petition. The four brothers of the deceased have filed their objections of the grant to the daughter.

It is common ground that the petitioner is the only daughter to the deceased and that she was the registered owner of the plot of land No. Githunguri/Kimathi/127. It is also common ground that the deceased was bequeathed the said plot by her deceased father along with four objectors who were given 10 acres each. It is also on record that the objectors in their petition filed before the Githunguri Court described the petitioner as a niece of the deceased instead of a daughter.

The objectors have relied on the issue of oral will and an agreement dated 23rd September, 1973 to oust the claim of the petitioner to seek administration or to inherit the property of her mother. It is also contended that the provisions of the Laws of Succession Act do not apply to the estate because the deceased died prior to the date of its commencement.

I must keep in mind that at this juncture I am not deciding the issue of inheritance but the issue of who shall be entitled to file the petition for letters of administration.

From the evidence before me even if I accept that there was an oral will (which I can not and shall not determine now) it does not come clearly that the deceased appointed any administrator during the averred meeting on Jamuhuri Day of 1980.

Section 2 (2) of the Act specifically stipulates that the administration of the estates of the persons dying before the commencement of the Act shall commence or proceed so far as possible in accordance with

this Act.

The Petitioner is the daughter of the deceased and as per the Act is the first person in order of preference to file the petition for letters of administration. The objectors are two degrees below her.

I do not see any difficulty in allowing her to file the petition in her name. The objectors, if they wish, can claim their right of inheritance from the estate during confirmation of the grant.

I therefore direct that the petition filed by the Petitioner be allowed and the grant of letters of administration be issued in her name.

Dated and delivered at Nairobi this 10th day of May, 2002.

K. H. RAWAL

J U D G E.