

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI
H.C. SUCCESSION CAUSE NO. 2487 OF 1996

IN THE MATTER OF THE ESTATE OF KIIRU MUHIA "A" (DECEASED)

R U L I N G

The issue herein to be determined is whether the only property of the estate i.e L.R. No. Gatamaiyu/Kagwe/167 be divided as per the provisions of Section 40 of the Laws of Succession Act or as per Kikuyu Customary Law. The facts are almost agreed. The deceased died in the year 1953. He had two wives, the first wife Wambui Lea Kiiru had one son namely Joseph Njuguna Kiiru and the second wife Nyambura Kiiru had three sons namely: Charles Kamau Kirru, James Kiramba Kiiru and Peter Muhia Kiiru.

It is also not controverted that in the year 1983 the land was sub-divided equally amongst the two houses as per the Kikuyu customary Law. I also take judicial notice that the deceased died in 1953 and provisions of the present Laws of Succession Act cannot apply to his estate. The contention of Mr. Mbigi the learned counsel for the Petitioner/Respondents to the effect that Section 40 of the said Act should be applied to the estate cannot be accepted. The Act came into operation only on 1st July, 1981 and its provisions cannot be applied retrospectively specifically taking into consideration provisions of section 1 thereof.

In the Restatement of African Law 2 (The law of Succession) by Eugene Contran (on page 13) the house of each wife gets an equal share of the properties irrespective of the number of children in each house. That is what was done in 1983 and I do not intend to upset the same for reasons abovementioned herein. I therefore direct that the Land bearing L. R. No. Gatamaiyu/Kagwe/167 be divided equally between the two houses. I shall not make any order on costs considering the circumstances of the case.

Dated and delivered at Nairobi this 27th day of September, 2002.

K. H. RAWAL

JUDGE.