



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI
HIGH COURT SUCCESSION CAUSE NO. 2825 OF 1999

IN THE MATTER OF THE ESTATE OF KAMUKI MWEITHI

(DECEASED)

R U L I N G

This application for objection was filed on grounds stated in Notice dated 31st March, 2000. It is not disputed that the objector is a daughter of the deceased from his first wife and that she is married. It is similarly not disputed that the Petitioners are her step – brothers.

The objector filed a Succession Cause before the Kiambu court being succession cause No. 352/1999 on 20th December, 1999. This Petition is filed on 10th December, 1999. Thus this Petition is prior in time. In her Petition the objector has mentioned all the children of the deceased while the Petitioners have only mentioned themselves and their unmarried sister.

The main issue to be decided by me is whether the estate of the deceased who died on 5th December, 1968 can be subject to the Laws of Succession Act (*Cap 160.*). The Act came into force on 15th July, 1981 long after the death of the deceased.

Section 2 (2) of the Act in no uncertain manner provides and I quote:

“ The estate of persons dying before the commencement of this Act are subject to the written laws and customs applying at the date of death, but nevertheless the administration of their estate shall commence or proceed so far as possible in accordance with this Act.”

The Act only repeals the laws set out in its Eighth schedule.

It does not include any customary law. Hence, undoubtedly the Kikuyu customary laws shall be applicable to this estate the parties being Kikuyu by tribe.

This application made under the Act is also competent for simple reasons that Section 2 (2) of the Act allows the commencement and process of the estate as per the provisions of the Act.

To find out what the Kikuyu customary law is in respect to the facts of this case, one has to fall back on Cotran’s Book of Commentaries on customary law. The Law as to the right of inheritance by the daughters is quite clear and is stated as under.

“ Daughters do not normally share in the inheritance. They live with their mother until they are married. If, however, a daughter remains unmarried, she may be allocated a piece of land by the muramati for use during her life time. On death or subsequent marriage, this normally reverts to the heir out of whose portion the land was given. If, however, she has illegitimate male children, the land is inherited by them.”

The objector is married and I do not have any evidence to show that she is either returned or has been granted any gift during the life time of the deceased.

My hands thus are tied by the customary law which precludes the objector/cross-petitioner to the entitlement of any share.

I also note that her mother is also deceased who had only life interest over the estate having no right to pass on her lifeinterest to a married daughter.

The objection/cross-Petition is thus dismissed. Under the circumstances I shall not make any order on costs.

Dated and delivered at Nairobi this 29th day of November, 2002.

K. H. RAWAL

JUDGE.