REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
H.C.SUCCESSION CAUSE NO.1579 OF 1994
IN THE MATTER OF ESTATE OF KAMAU MWANGI –(DECEASED)

ANASTASIA NJERI KAMAU …… APPLICANT

VERSUS

1. DAVID GITAU KAMAU

2. JOHN MBURU KAMAU …….…….…… RESPONDENTS

R U L I N G

The applicant is a daughter to the deceased KAMAU MWANGI while the Respondent are her brothers. The deceased died on 6th June, 1987 and grant of Letters of Administration was issued to the Respondent **DAVID GITAU KAMAU** on 21/3/1995 and was confirmed on 19/4/1996. The deceased was survived by 4 sons and 1 daughter ad the total acreage of the estate was 27.67 acres, but of which the applicant was given 1.7 acres. She brought this application by way of summons under Probate and Administration rule 49 and Order XLIV Rule 1 of the civil procedure Rules for review of the orders of confirmation which was issued on 19/4/1996.

The application is based on the ground that there are mistakes on the face of the record in that the applicant was not present when the grant was confirmed and that there was no consent by all the interested parties as required by section 37 of the Act and Rule 40 (8) of the Probate and Administration Rules.

Counsel for the applicant further submitted that what was in court purporting to be consent was a letter from the Chief which shows the mode of distribution of the estate, which gave the applicant less land then others while land was to be shared equally between the heirs.

The 1st respondent who submitted on his behalf and on behalf of the rest of the family opposed the application and stated that the distribution was in accordance with the wishes of his late father and his mother. All the heirs attended the Chief's meeting and agreed on the mode of distribution and that is what was contained in the Chief's letter, which they filed in court.

He further submitted that the applicant is a married daughter and could not be entitled to a share equal to the sons. She was satisfied with the share she was given, and had consented to the confirmation of the grant and she was present when the same was confirmed.

The applicant was given 1.7 acres initially, she was added 0.56 and another 1.5 acres. In all she was given 3.76 acres. And as a married daughter what she was given was mote than adequate. She had left her first husband after out father had died, and she has since married another man called Karugu with who she has 3 issues whose names he gave as Catherine Mugune, Wanjiku and Martin Karugu. He urged the court to dismiss this application. Having considered the application as well as the submissions by counsel for the applicant and the respondent, I am satisfied that the applicant as a married daughter was given sufficient provision from the estate of her deceased father and I see no good reason to interfere with the grant as confirmed.

This application is therefore dismissed with costs to the respondent.

Dated and delivered at Nairobi this 21st May, 2001.

J.L.A OSIEMO

JUDGE