



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
IN THE FAMILY DIVISION OF KENYA
AT NAIROBI
SUCCESSION CAUSE NO.888 OF 2009
IN THE MATTER OF THE ESTATE OF GLADYS WAMBUI MBOCHA (DECEASED)
JUDGEMENT

1. The deceased herein Gladys WambuiMbocha (deceased) died on 1st September 2006 and was survived by the following:

- a. Wilkins KibuiGichinga – Son
- b. David KinuthiaMbocha – Son
- c. JemimahWanjiruMboche – Daughter
- d. Walter Mbuthia – Son (Now Deceased)
- e. Charity WangariMungai – Daughter (Now Deceased)
- f. Hannah NungariWanyoike –Daughter
- g. Salome NjokiMboche – Daughter (Now deceased)

2. The 3 administrators of the estate are Wilkins KibuiGichinga, Gladys Wambui Kamau and JemimahWanjiruMbocha.

3. Two of the administartors herein Gladys Wambui Kamau and JemimahWanjiruMbocha filed a summons for confirmation of the grant issued on 22nd April 2010. The summons for confirmation dated 7th March 2018 had a proposal on how the property of the estate was to be shared.

4. The 3rd administrator, Wilkins KibuiGichinga refused to sign the same and on 20th July 2018, he filed his affidavit of protest sworn on 18th July 2018 objecting to the proposed mode of distribution of the deceased's property.

5. The hearing of the protest proceeded by viva voce evidence. The objector said the deceased had given directions how she wanted her property to be distributed.

6. The objector, who testified as OW1, gave a breakdown on how the deceased wanted the property shared and he said she did not want Plot No. LR. NO. 209/4194/35 to be sold but that the same should benefit the following;

- a. Wilkins KibuiGichinge
- b. Salome NjokiMbocha (deceased)
- c. JemimahWanjiruMbocha
- d. Walter Mbuthia (deceased)

7. The petitioners also gave their proposal on the sharing of the Estate and submitted that the estate should be shared equally.
8. Upon considering the evidence in the case and the submissions by both parties, I find that the issues for determination in the case are as follows;
 - a. Whether the deceased had distributed her property inter vivo.
 - b. Whether the deceased left a valid oral will or written will.
 - c. Whether all the beneficiaries are entitled to the Estate of the deceased.
9. On the issue of as to whether the deceased had distributed her property prior to her demise on 1st September 2006 I find that there is evidence that any transfer of property to any beneficiaries had been effected.
10. There is evidence that the deceased had allocated some of the beneficiaries portions of tea and coffee trees and spaces to use in land but the property was distributed inter vivos. The estate of the deceased accorded subject to distribution.
11. On the issue as to whether the deceased left an oral will again I find that whatever the objector alleges that an oral will does not meet the threshold of an oral will.
12. For an oral will to succeed, it has to be that the deceased proposed her wishes in how the property was to be shared in the presence of this witnesses and that the same happened within at least three months before she died. There was no such evidence and I find that the deceased did not leave any will – oral or written.
13. On the issue of as to whether all the beneficiaries are entitled to the estate of the deceased, I find that the estate will devolve in accordance with intestacy rules under the Law of Succession Act. This is because the deceased died intestate or without leaving a will.
14. The Constitution of Kenya 2010 also provides that all the beneficiaries are entitled to share the estate equally whether they are male or female, married or single.
15. I accurately overrule the objection and direct that all the beneficiaries and the administrators agree on how to share the estate.
16. The three administrators are directed to file a joint summons for confirmation within 30 days of this date, failure to agree on the equitable distribution of the estate will leave the court with no option but to revoke the grant to the three administrators and issue the same to an independent party to share the Estate equally amongst the beneficiaries.
17. This case will be mentioned on sixth May 2019 for compliance and for directions.

DELIVERED, SIGNED AND DATED IN OPEN COURT THIS 5TH DAY OF APRIL 2019

ASENATH ONGERI

JUDGE OF THE HIGH COURT OF KENYA, NAIROBI