



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NYERI**

**HIGH COURT SUCCESSION CAUSE NO.205 OF 2014**

**IN THE MATTER OF ESTATE OF ESTHER WANGUI KAMUHIA alias WANGUI KAMUHIA0 (DECEASED)**

**ROSE WAIGUMO NDEERE.....PETITIONER**

**-VERSUS-**

**BANCE WANGECHI WACHIRA.....1<sup>ST</sup> PROTESTOR**

**MARY WANJIKU KAHU.....2<sup>ND</sup> PROTESTOR**

**AND**

**FRANCIS WAMBUGU KAMUHIA.....1<sup>ST</sup> OBJECTOR**

**SAMMY MWANGI MATHANGANI.....2<sup>ND</sup> OBJECTOR**

**JUDGMENT**

1. The only issue for determination herein is whether the three married daughters of Esther Wangui Kamuhia (deceased) can inherit from her estate comprised of Aguthi/Gatitu/2994.
2. Esther died on 26<sup>th</sup> February 2013. She was survived by her five children: -
  1. *Bance Wangechi Wachira- daughter*
  2. *Mary Wanjiku Kahu- daughter*
  3. *Rose Waigumo Ndeere-daughter*
  4. *Francis Wambugu Kamuhia-son*
  5. *Sammy Mwangi Mathangani- son*
3. Grant of letters of administration intestate was made to the three sisters on 28<sup>th</sup> August 2014. However even before the certificate of confirmation could issue the two brothers, the objectors herein were already constructing on the land leading to an application dated 15<sup>th</sup> June 2016 seeking restraining orders against them to await the certificate of confirmation of grant.
4. As a result, on 18<sup>th</sup> August 2016, the grant issued to the sisters was revoked and a fresh one issued to Bance Wangechi Wachira and Sammy Mwangi Mathangani.
5. Sammy Mwangi Mathangani filed summons for confirmation of grant dated 25<sup>th</sup> August 2016 on 31<sup>st</sup> August 2016. His proposed mode of distribution was that the estate be shared equally between him and his brother on the ground that that was the wish of the deceased which she had rendered into writing in a document he produced dated 2<sup>nd</sup> January 2010. That one of the petitioners Rose Waigumo Ndeere was deceased and the others were each married with their own homes.

6. Bance Wangechi Wachira filed an affidavit of protest on 20<sup>th</sup> September 2016 where she proposed that the estate be shared equally among herself and her siblings as children of the deceased.

7. The protest and summons for confirmation of grant were heard by way of viva voce evidence.

8. For the protesters, their position was that their mother had given the 2 sons each 5 acres of land before she died – and had said the remaining portion belonged to all her children. They relied on minutes of a meeting held on 28<sup>th</sup> September 2008 where their mother was recorded as having stated that all her property belonged to all her children both male and female.

9. The objectors on their part took the position that their sisters were all married with their own homes and properties and were not entitled to inherit their mother's property. In any event that their mother had on 2<sup>nd</sup> January 2010 called elders and told them in the presence of the 2 sons that her land was to be shared equally between them.

10. Parties agreed to file written submissions and by 29<sup>th</sup> January 2019, only counsel for the protesters had filed submissions. I have considered the evidence and submissions.

11. It is evident that the objectors are saying that their mother willed the estate to the 2 of them.

12. The document produced by the objectors cannot be deemed to be a will. It is made in the presence not only other witnesses but the beneficiaries as well. The independence of the alleged wishes cannot be vouchsafed. This is especially so after the said Sammy testified that his mother called him as the eldest son and refuted what was said in the meeting held in 2008 when he told her learnt of the earlier meeting held in his absence, she who denied having made the statements alluded to her. She did so in the absence of all those who were in the earlier meeting, who would have had the benefit of hearing her deny the same. Why?

13. If it was a will this cause would not have been filed as that of an interstate and this document would have been annexed to the petition. It only came out during the hearing of the protest.

14. Similarly protester was relying on a record of proceedings made in two thousand and eight. Their mother is recorded as having stated during the discussion over the disturbances by one of her sons herein that all her property belonged to all her children. This is important as it was stated in the context where the said son was refusing his mother to sell her own farm produce and had to be restrained from doing so.

15. The only conclusion is that the deceased died intestate. Each party is putting forward the evidence that suits their position. Well, that leaves the court to fall back on the law.

16. First issue of married daughters not inheriting from their parents is a dead horse. The Law of Succession Act does not know sex/gender. It knows the deceased's child.

17. Secondly that parcel of land belonged to the mother of all the parties herein. None of them has a superior right of inheritance. By taking it all the sons will turn it to their own private property with no access to the daughters. The fact of their marriages per se does not change the fact that the protesters are children of the deceased.

18. The law under Section 38 Laws of Succession Act provides for **Where intestate has left a surviving child or children but no spouse:**

*Where an intestate has left a surviving child or children but no spouse, the net intestate estate shall, subject to the provisions of sections 41 and 42, devolve upon the surviving child, if there be only one, or shall be equally divided among the surviving children.*

19. It is common ground that the two sons were each given 5 acres of land by the deceased before she died. Their sisters are not after the 5 acres each got. Neither are they saying that they should be the only ones to inherit their mother's estate. They are saying that they are all and each entitled. The law is on their side.

20. The objection is rejected. The protest filed on 20<sup>th</sup> September 2016 by Bance Wangechi Wachira is allowed as filed. The estate will devolve in equal shares among all the children of the deceased.

1. Bance Wangechi Wachira- daughter

2. Mary Wanjiku Kahu- daughter

3. Rose Waigumo Ndeere-daughter

4. Francis Wambugu Kamuhia-son

5. Sammy Mwangi Mathangani- son

21. No orders as to costs.

**Mumbua T Matheka**

**Judge**

**Dated, delivered and signed this 9<sup>th</sup> May 2019 at Nyeri.**

In the presence of:-

Sammy Mwangi Mathangani

Francis Wambugu Kamuhia

Kimumu holding brief for Mr. Kiboi for Protester

Muhoho is for Petitioners no appearance.