



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

SUCCESSION CAUSE NO. 666 OF 2013

IN THE MATTER OF THE ESTATE OF M'AGIRI BAIKWINGA alias AGIRI BAIKWINGA (DECEASED)

HENRY NKOBU M'AGIRI.....PETITIONER

-V-

JOSEPHINE KAJUJU NKOBU.....OBJECTOR

RULING

1. **M'Agiri Baikwinga alias Agiri Baikwinga** died on 5th June, 1987. He left behind **M'Marete M'Agiri and Henry Nkobu M'Agiri** as his survivors. He also left behind the property known as **LAND PARCEL NP. NTIMA/IGOKI/1** as his estate.

2. On 5th December, 2013, Henry Nkobu M'Agiri, his son ("the petitioner") petitioned for letters of administration intestate which was issued to him on 19th March, 2014. By a summons dated 19th March 2015, he applied for its confirmation proposing to distribute the estate as follows:-

- a) **Robert Kirimi Meme** - **105ft by 50ft**
- b) **Josphat Kinoti Mwirichia** - **1 acre**
- c) **Henry Nkobu M' Agiri** - **balance**

3. On 6th November, 2018, **Josephine Kajuju M'Magiri** filed an affidavit of protest against the proposed confirmation. She contended that as a daughter of one of the deceased's children, **M'Marete M'Magiri**, she had not been provided for. She proposed that the estate be distributed as follows: -

NTIMA/IGOKI/1

- a) **Henry Nkobu M'Magiri** - **2.15 acres**
- b) **Josephine Kajuju Nkobu** - **2.12 acre**
- c) **Robert Kirimi Meme** - **1/4 acre**

4. The issue for determination is distribution of the estate. The deceased had only two sons, **M'Marete M'Magiri** (deceased) and **Henry Nkobu M'Magiri**. Under **section 38 of the Law of Succession Act**, the estate is to be distributed to the two equally. Since **M'Marete M'Magiri** however, has died and has left two children, his share will be distributed to his children **Josphat Kinoti Mwirichia** and **Josephine Kajuju Nkobu** equally. The position of **Robert Kirimi Meme** vis a vis the deceased was not clear. It was not explained.

5. Accordingly, the estate of the deceased is to be distributed as follows: -

NTIMA/IGOKI/1

- a) **Henry Nkobu M'Magiri** - **0.91 ha**

b) Josphat Kinoti Mwirichia - 0.455 ha

c) Josephine Kajuju Nkobu - 0.455 ha

6. This being a family matter, there will be no order as to costs.

SIGNED at Meru;

A. MABEYA

JUDGE

DATED and **DELIVERED** at Meru this 13th day of December, 2018.

F. GIKONYO

JUDGE