



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NYERI**

**SUCCESSION CAUSE NO. 578 OF 2004**

***(IN THE MATTER OF THE ESTATE OF KIRAGU NGIGIE alias KIRAGU NGEIGIE (DECEASED))***

**DAINA NYAMBUR KIRAGU.....PETITIONER/APPLICANT**

**-VERSUS-**

**ALEXANDER NGIGIE KIRAGU**

**(Substituted by Grace Wanjiru Kiragu).....PROTESTOR**

**JUDGMENT**

This judgment is on a protest filed against the summons for confirmation of grant dated 23<sup>rd</sup> November, 2006 made in respect of the estate of Kiragu Ngigie (deceased) who died on 24<sup>th</sup> February, 1995 domiciled in Kenya and residing at Chinga in Nyeri County.

According to the petition for letters of administration intestate of the deceased's estate filed in court on 24<sup>th</sup> December, 2004, the deceased was survived by his daughter, the petitioner herein and Alexander Ngigie Kiragu, his son who died during the pendency of the succession cause but was substituted in these proceedings by his wife who is now the protestor.

The only asset that is indicated to comprise the deceased's estate is a landed property identified as **Parcel No. Chinga/Gikigie/1218** measuring approximately 0.4 hectares.

In the affidavit in support of the summons for confirmation of grant, the petitioner has proposed to have this particular parcel shared out in two equal shares between Alexander Ngigie who is now represented by his widow, Grace Wanjiru Kiragu and one James Gachau Wachira. It is not clear from that affidavit where this latter person has emerged from considering that the applicant herself identified only two children as having survived the deceased and therefore beneficiaries to his estate.

The deceased Alexander Ngigie, opposed the sharing out of the estate as proposed by his sister; according to his affidavit of protest sworn on 23<sup>rd</sup> April, 2007 and filed in court on 11<sup>th</sup> May, 2007, the property in issue was initially allocated to his mother and that upon her demise he was to inherit the land because his sister, the petitioner is married under Kikuyu customary law.

On 19<sup>th</sup> March, 2015 parties agreed to have the summons and the protest disposed of on the basis of the affidavit evidence and written submissions; they effectively departed from the earlier position according to which the court had directed that the matter be disposed of by way of oral evidence.

In the absence of any dispute on the extent of the estate and the identity of the deceased's survivors, I am

inclined to conclude that this is a fairly straight forward matter. I say so because **section 38** of the Law of Succession Act, Cap. 160 to which the distribution of the deceased's estate is subject is clear that where an intestate has left surviving children his net intestate estate ought to be distributed between or among them equally; it states:-

***38. 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 be equally divided among the surviving children.***

**Sections 41 and 41** would be of little relevance here because the beneficiaries are all adults and although the protestor suggested that the deceased had made some advances to them during his lifetime, there is no evidence that such advancements were not equal such that they have to be taken into account in the distribution of the net intestate estate.

Without belabouring the point I would direct that the land referred to as **Parcel No. Chinga/Gikigie/1218** be shared out in equal shares between Daina Nyambura Kiragu and Grace Wanjiru Kiragu; for avoidance of doubt Daina Nyambura Kiragu shall get 0.2 hectares while Grace Wanjiru Kiragu shall get 0.2 hectares.

The protestor demonstrated that the petitioner had transferred the entire parcel to herself way back in 2005; such transfer is of course illegal and is hereby cancelled. For completeness of record the land registrar, Nyeri lands office, is directed to cancel the registration of Daina Nyambura Kiragu as the registered proprietor of **Parcel No. Chinga/Gikigie/1218** pending the subdivision and **registration** of the equal parcels in the respective names of Daina Nyambura Kiragu and Grace Wanjiru Kiragu. The grant made to the petitioner on 23<sup>rd</sup> March, 2005 is confirmed in the forgoing terms. Parties will bear their own respective costs. It is so ordered.

**Dated, signed and delivered in open court this 3<sup>rd</sup> June, 2016**

Ngaah Jairus

**JUDGE**