

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NYERI

SUCCESSION CAUSE NO. 830 OF 2013

IN THE MATTER OF THE ESTATE OF W G-DECEASED

D W K.....Petitioner

versus

E W G.....1stProtector

L G M.....2ndProtector

JUDGEMENT

The deceased in these proceedings died intestate on the 13th day of June 1998 at the age of 35 years. On the 27th November 2013 the petitioner herein took out citations to accept or refuse letters of administration for service upon a one **L G M** and **E W G**. On 8th January 2014, the petitioner herein describing herself as "*a co-wife to the deceased*" petitioned for letters of administration. She named both protestors and herself as persons surviving the deceased. The only asset listed as belonging to the deceased is title number **G/M/** [particulars withheld] . The grant was issued to the petitioner on 17th March 2014 and on 14th January 2015 the petitioner applied for the said grant to be confirmed and proposed that the said land be shared equally between herself and the protestors.

On 19th January 2015, the protestors herein filed an affidavit of protest sworn by the first protestor on her own behalf and on behalf of the second protestor in which she averred that these proceedings relate to her mother's estate and that the petitioner is their step mother and that their late father owned a separate parcel of land. She averred that the above land belonged to their mother and it was given to her by her parents, hence, the petitioner is not entitled to a share of the same since she is not a dependant of the deceased. The protestors case is that the above land ought to be shared between the protestors in equal shares.

At the hearing of this suit, the protestors reiterated the above and maintained that the above land belonged to their late mother, hence their step mother is not entitled to inherit the same, and added that their father also owned land currently being utilized by the petitioner and they are not claiming it, but would prefer that the petitioner retains the land that belonged to their father. The first protestor produced a copy of the green card to support their argument that the land was given to their late mother by her father, that is their grandfather. She reiterated that their father owned **G/M/**[particulars withheld], and that he was in the process of purchasing the same when he died and that the said land is used by the petitioner. She claimed that the petitioner has refused to petition for grant of letters of administration to their fathers estate even though she is using the land. She also stated that she farms part of her late mothers land with her sister and that the petitioner farms the other part and in a meeting held involving elders, the petitioner was given three and a half years to vacate from the said land but had refused to do so, instead she filed this case. She produced a letter from the chief confirming the above decision.

As the petitioner cross-examined, the protestor she kept on referring to a case at Karatina court and I directed that the said file being succession cause number 14 of 1999 be produced for me to appreciate and determine its relevance to this case. I also allowed the petitioner to file a further affidavit. The said file was availed and the petitioner also filed the supplementary affidavit in which she averred that succession

cause number 14 of 1999-Karatina involved her late husband and that in the said case it was ordered she was to get that 2.5 acres out of **G/M/[particulars withheld]**.

I have perused the file relating to succession cause number **14 of 1999**. I note that the cause related to the estate of a one **W G**. The death certificate used in the said cause is number **484385** dated 21st January 1999 and the deceased is described as **G W G**. In the present case, death certificate number **0017432** has been used and in the said death certificate, the deceased is described as **G W G**. I find that the two files relate to the same deceased person. The said parcel of land being **G/M/[particulars withheld]** has been listed as the only property belonging to the deceased. The beneficiaries listed in the said cause include the protestors herein and their late father, **G M N** who filed an objection to the making of the grant claiming to be the sole surviving spouse of the deceased and claimed priority to obtaining the grant.

The said **G M N** also filed an affidavit of protest in the said cause and proposed distribution as follows, himself **3.0** acres and the protestors herein to get **one acre** each. On the other hand, the protestors herein proposed that each one of them gets **two acres** and their father gets **one acre**.

The proceedings show that the dispute as to who was to be appointed as the administrator was heard and on 23rd November 1999 and the court appointed the first protestor as the administrator but directed that the parties shall work together and agree on the mode of sharing the estate.

However as at 18th April 2001, the first protestor had not applied for the confirmation of the said grant and prompted their father who was the objector to apply for confirmation and after hearing both parties in a ruling dated 18th April 2001, the court awarded the protestors **one and a half acres each** and the balance of the land was awarded to their father to their late father who was the objector in the said case. There is nothing to show that the said ruling has ever been appealed against and I hold the view that it still stands.

The petitioners evidence was that she wants the court to give her what was granted to her husband by the court in Karatina, referring to the above case. It is not clear why the petitioner opted to file the present case relating to the same deceased estate, yet distribution was ordered in succession cause number **14 of 1999**. I reiterate that it was not necessary to file this second case involving the same estate. This case is strictly speaking an abuse of court process. The lower court's decision still stands. The proper approach would have been to institute a petition for the estate of **G M N** -deceased and seek to distribute his estate which includes the portion of land awarded in succession cause number **14 of 1999**, Karatina.

It is unfortunate that the parties have pursued this case since 2013 seeking to distribute an estate that was distributed by a competent court way back on 18th April 2001 an exercise that was absolutely not necessary and amounted to waste of their resources and valuable judicial time. In view of the foregoing reasons, these proceedings were totally unnecessary, misguided, misconceived and abuse of judicial process. I dismiss this petition with no orders as to costs. The effect is that the lower courts verdict still stands.

No orders as to costs. Right of appeal 30 days

Signed, dated and delivered at Nyeri this 3 day October of 2016

John M. Mativo, Judge