



**REPUBLIC OF KENYA**

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

**SUCCESSION CAUSE NO. 19 OF 2011**

***(IN THE MATTER OF THE ESTATE OF MIRIAM WANJIRU KIBARA (DECEASED))***

**FAITH MUTHONI KIBARA.....APPLICANT**

**VERSUS**

**GRACE WAHIGA WAKAMWE.....1<sup>ST</sup> PROTESTOR**

**SUSAN WAMBUI MUCHINA.....2<sup>ND</sup> PROTESTOR**

**RULING**

The applicant and the protesters are daughters of Miriam Wanjiru Kibara (deceased) who died on 13<sup>th</sup> May, 1998; apart from the three daughters the deceased was also survived by Joshua Irungu Kibara who was her only son.

The grant of letters of administration of the deceased's estate was made to the applicant on 22<sup>nd</sup> July, 2011. On 17<sup>th</sup> May, 2013, the protesters filed a summons in court seeking revocation of the grant; the summons does not show the grounds upon which it was made but it is said to have been seeking for an order for the grant to be made jointly to **Faith Muthoni Kibara** and **Grace Wahiga Wakamwe**. This summons was, however, later withdrawn by the protesters on 13<sup>th</sup> February, 2014.

The applicant on the other hand, had by a summons dated 23<sup>rd</sup> September, 2013 sought to have the grant confirmed. Again the protesters protested against the confirmation of the grant and filed an affidavit of protest in that regard on 4<sup>th</sup> December, 2013. When the summons for revocation of grant was withdrawn, directions were given by this court to the effect that the protest and the summons for confirmation of grant be disposed of by way of oral evidence; accordingly, this case was heard on 9<sup>th</sup> December, 2014 when the applicant and one of the protestor's testified.

The identity of the deceased's survivors and beneficiaries is not in dispute; it is also not in dispute that the only asset available for distribution in the deceased's net intestate estate is a land parcel known as **L.R. No. Thegenge/Gathuthi/200** which measures approximately 3.15 ha. The only issue in the contest between the parties is how this parcel of land should be shared out amongst the deceased's beneficiaries.

In the affidavit in support of the summons for confirmation of grant, the applicant proposed that the land should be shared out equally between herself and **Joshua Irungu Kibara**. The protesters' protest on the other hand, is based on the obvious ground that they have been omitted from the distribution of the estate and if the grant was to be confirmed in the manner proposed by the applicant they would effectively be disinherited. They have suggested that their only brother, Joshua Irungu Kibara should get **1.21 ha** while each of the three sisters should get **0.646 ha** of the deceased's estate.

The law on distribution of property where, as is this case here, the deceased is only survived by his or her children without a spouse is found in **section 38** of the Law of Succession Act; that section provides as follows:-

***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.*

It is apparent from this provision of the law that each of the deceased's children is entitled to an equal share of the deceased's net intestate estate; **sections 41** and **42** to which this section is said to be subject are of little relevance here because as far as **section 41** is concerned the beneficiaries are all of full age and therefore the issue of their respective shares being held in trust does not arise. As for **section 42** there is no evidence that the deceased gave or settled any property for the benefit of any of the beneficiaries or that any property was appointed or awarded to any of them and that such property should be taken into account in determining the share of the net intestate estate finally accruing to each of the beneficiaries.

Considering the clarity with which **section 38** of the Act is couched, it is unnecessary to belabour the point that the deceased's net intestate estate should be shared out equally amongst her four children; in view of the dispute between them and considering that they are not in agreement of how much each of them is entitled to, this court cannot do any better than strictly apply **section 38** of the Act and give each of them an equal share of the deceased's estate.

Needless to say, there is no basis in law to divide the estate only between two of the persons beneficially entitled to the estate as the applicant has proposed in the summons for confirmation of grant. The protestors on the other hand have proposed to have a larger share of the estate given to their brother **Joshua Irungu Kibara**; their proposal is informed, as I understood them, by the fact that their brother took care of their mother prior to her demise. However, this proposal does not appear to fall into any of the circumstances that may justify unequal distribution of the estate prescribed in **sections 41** and **42** of the Act. I must hasten to add here that there is nothing wrong in the protestors ceding their respective shares or portions thereof to their brother if they are inclined to do so; this they can do but only after the grant has been confirmed in compliance with **section 38** of the Act.

Having so said, I hereby uphold the protestors' protest and order that land parcel known as **L.R. No. Thegenge/Gathuthi/200** which is the sole asset comprising the deceased's net intestate estate to be shared equally between **Faith Muthoni Kibara, Grace Wahiga Wakamwe, Susan Wambui Muchina** and **Joshua Irungu Kibara**; accordingly, the grant of letters of administration intestate made to **Faith Muthoni Kibara** in respect of the deceased's estate on 22<sup>nd</sup> July, 2011 is hereby confirmed in those terms. There will be no orders as to costs.

Dated, signed and delivered in open court this 6<sup>th</sup> March, 2015

**Ngaah Jairus**

**JUDGE**