

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

FAMILY DIVISION

MISC. CIVIL APPLICATION NO. 33 OF 2014

**IN THE MATTER OF KIAMBU PRINCIPAL MAGISTRATE'S COURT SUCCESSION CAUSE
NO 83 OF 2007**

IN THE MATTER OF THE ESTATE OF STEPHEN KINUTHIA KIBERU (DECEASED)

AND

WINNIE WANJIRU KINUTHIA.....APPLICANT

VERSUS

JUDITH WANJIKU KINUTHIA.....RESPONDENT

JUDGMENT

1. The deceased Stephen Kinuthia Kiberu died intestate on 30th April 1992. He was survived by a widow (the respondent) and nine (9) children who included the applicant. The respondent petitioned the Senior Principal Magistrate's Court at Kiambu for the grant of letters of administration intestate. This was in Cause No. 83 of 2007. The grant was issued to her on 12th June 2007. Because the value of the estate of the deceased was in excess of the jurisdiction of the subordinate court, on 1st October 2013 the Cause was transferred to this Court. By the time, the respondent had filed summons dated 4th May 2009 for the confirmation of the grant issued to her. The said summons was consented to by all her children, except the applicant who protested to the same. One of the issues raised in the protest was that she was not consulted when the respondent petitioned the court for the grant of letters of administration. That contention was denied by the respondent who stated that all her children, including the applicant, had consented to the filing of the petition. Indeed, the record shows that on 25th April 2007 a consent to the making of a grant of administration intestate to a person of equal or lesser priority under **rule 26(2) of the Probate and Administration Rules** was filed by the respondent. It showed that all the beneficiaries, including the applicant, had signed the document. Each had given his/her identity card number. I find no merit in the applicant's contention that she was unaware of the petition.
2. The applicant's main concern related to the mode the respondent had proposed to share the estate. Her quarrel was that in the proposed distribution her two brothers Daniel Munderu Kinuthia and Peter Kimani Kinuthia had each been allocated 0.0952 Ha. when she had got only 0.0476 Ha. Secondly, that her brothers had been given parcels that were most proximate to the road and therefore prime in relation to hers. Thirdly, that the portions allocated to her brothers and to the respondent were on fairly flat land while the rest of the parcels, including hers, were on a slope. Lastly, she wanted indication in whose name(s) the graveyard (0.0476 Ha.) and dam reserve (0.0930 Ha.) would be registered. She gave her own proposal of how the estate should be shared. It is material that the proposal included graveyard (0.0476 Ha.) and dam reserve (0.0930 Ha.). She asked that the graveyard be registered in the name of the respondent to hold in trust of the beneficiaries. In the proposal she asked that all the children of the deceased get 0.0476 Ha. each, the respondent gets 0.0465 Ha., the other five daughters jointly get two portions each measuring

0.0476 Ha.

3. In the respondent's proposal she was to get 0.465 Ha. and the graveyard of 0.0476 Ha., the applicant was to get 0.0476 Ha. and her sisters were to share 0.0952 Ha. It is in that proposal that Peter Kimani Kinuthia and Daniel Munderu Kinuthia were to each get two parcels each measuring 0.0476 Ha. Each was to finally get 0.0952 Ha.
4. The respondent filed a map (sheet) showing the portions and their distribution as proposed by her. The portions are A to K. A is nearest the road and is most valuable. The values decrease from A to K. K is the least valuable. It is clear that all the beneficiaries, except for the applicant, agree with the respondent's proposal. In this proposal plots B and D will go to Daniel and C and E to Peter. The respondent gets A. It is clear that Daniel and Peter will get the most valuable portions of the estate. The applicant has reason to complain. However, unlike her other five sisters, who will share two plots each measuring 0.0476 Ha. she will get 0.0476 Ha. alone. I will allow the application for confirmation on the basis of the proposal by the respondent. I have taken into consideration the shape of the parcel left by the deceased, and also that it is not practically possible to attain equality in the circumstances. I ask that the graveyard and the dam reserve (both being common utilities) be registered in the name of the respondent to hold in trust for all the beneficiaries.

DATED and DELIVERED this 8th day of September 2015.

A.O. MUCHELULE

JUDGE