



REPUBLIC IN KENYA

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

SUCCESSION CAUSE NO. 809 OF 2009

RUHENI GITU alias RUHENI S/O GITU DECEASED

AND

GEREMANO WANJOHI RUHENI..... PETITIONER

AND

WANJOHI KAMAUCITOR

JUDGMENT

1. The petitioner WANJOHI KAMAU petitioned for grant of letters of administration in the matter of the estate of RUHENI GITU and cited the following:

GEREMANO WANJOHI RUHENI

RICHARD GITHINJI RUHENI

LUCY WANJUGU GICHOHI

PRISCILLA WAMUYU NJAGA

MARY WAMBUI KARIUKI

AGNES NJAMBI RUHENI

2. On 6th October 2009 the citees entered appearance through the law firm of MAINA KARINGITHI & Co. Advocates and on 21st December 2010 letters of administration were issued to the petitioner herein.
3. On 14th August 2012 the petitioner filed an application for confirmation of the letters of administration herein and proposed distribution as follows:

LR. MUHITO/MUYU/549 - 2.9 acres

a. GEREMANO WANJOHI RUHENI - 0.725 acre absolutely

b. RICHARD GITHINJI RUHENI - 0.725 acre absolutely

c. WANJOHI KAMAU - 1.45 acre absolutely

4. On 12th November 2012 GEREMANO WANJOHI RUHANI, RICHARD GITHINJI RUHANI and AGNES NJAMBI RUHANI filed an affidavit of protest in which they deponed that the deceased died on 21st November 1992 and not 1962 as had been alleged. It was stated that the deceased was a brother to the petitioners father and therefore the estate should be divided as follows:

- 1) WANJOHI KAMAU - 0.70 Acres
- 2) GEREMANO WANJOHI RUHANI - 0.733 acres
- 3) RICHARD GITHINJI RUHANI - 0.733 acres
- 4) AGNES NJAMBI RUHANI - 0.733 acres

5. MARY WAMBUI KARIUKI, PRISCILLA WAMUYU NJAGA and LUCY WANJUGU GICHOHI all married daughters of the deceased filed an affidavit in support of the protest and deponed that they did not wish to share in the distribution of LR. NO. MUHITO/MUYU/545 and supported the proposed distribution by the protestors.

SUBMISSION

6. Directions were given that the protest be heard by way of written submission which have now been filed. On behalf of the protestors it was submitted that this proposed mode of distribution was influenced by the outcome of earlier meeting held on 4th February 1981 produced as annexure GRA '2' where the parties in dispute were the deceased Ruhani Gitu and the petitioner herein where it was decided that the land be shared as follows:

- RUHANI GITU - 2.2. Acres
- WANJOHI KAMAU - 0.7 Acres

7. It was submitted that the petitioner never challenged the clan decision and is in occupation of 0.7 acres portion. It was further submitted that the applicant has not challenged the said proceedings.
8. On behalf of the petitioner it was submitted that the suit land was registered in name of the deceased in trust for the entire GITU RUHANI's family and therefore the petitioner is after his deceased father's half from his uncle and therefore the land should be divided into two. It was submitted that the protest is based upon a false averment and lie on the part of the protestor.
9. I have stated before that the protest of this nature ought to be heard by way of oral evidence. It is clear from the petitioners submission that the same has attempted to introduce evidence which is untested through his written submission and has not answered the affidavit by this protestor.
10. The dispute herein having been determined by the clan elders on 4th February 1981 and the petitioner having not disputed the side determination and noting that the issue of alleged trust has not been established as the law requires I allow the protest herein and order that the grant be confirmed with distribution as per paragraph 9 of the affidavit of protest.
11. This being a family dispute each party shall bear their own cost.

Dated, signed and delivered at Nyeri this 11th day of July 2014.

J. WAKIAGA

JUDGE

Court: Ruling read in open court in the absence of the parties and their advocates.

J. WAKIAGA

JUDGE

11/7/2014