



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

SUCCESSION CUASE NO. 906 OF 2004

IN THE MATTER OF THE ESTATE OF ELIZABETH WANGARI KINGARA (DECEASED)

RULING

The application is the affidavit of protest filed on 15/7/2011 following the application of confirmation of grant filed on 23/3/2011. The deceased Elizabeth Wangari Kingara died on 3/4/1998 vide death certificate NO 523901. Her husband died earlier on in 1952.

The deceased according to the application for confirmation of grant was survived by;

1. Lucy Wanjiku Kingara
2. Patricia Muthoni Kingara
3. Michael Mbuthia Kingara
4. Anne Wangari Kingara (Njuguna)
5. Mary Njeri Mwangi

The identification and shares of all persons beneficially entitled to the said estate have been ascertained and determined as follows;

1. Patricia Muthoni Kingara - 1 acre
2. Lucy Wanjiku Kingara – ½ acre
3. Michael Mbuthia Kingara – ½ acre of L. R. No. 250 Githunguri.

In the affidavit of protest by Elizabeth Wambui Mbuthia the wife of Michael Mbuthia Kingara now deceased. She claimed before the deceased died she had shown each of the family members where to build.

Lucy Wanjiku Kingara and Michael Mbuthia Kingara were allocated Plot Githunguri/Riuki/T.97 to compensate the family house allocated to Patricia Muthoni. A copy of the mutation form showing the distribution was attached.

The Protestor averred that there was no reason why Patricia Muthoni got a bigger portion of L.R Githunguri/Riuki/250 than the rest of the family instead the property should be allocated to the three children equally.

The hearing date of 14/10/2014 was obtained by the Protestor. The Respondent was served vide affidavit of service filed on 29/9/2014. On that date, the court heard the evidence of the Protestor. She told the Court that she is the wife of Michael Mbuthia Kingara and has five (5) children; namely

- a. Tom Kingara
- b. Lilian Wangare (deceased)

- c. Muthoni (deceased)
- d. Caroline Njeri

The Petitioner Lucy Wanjiku was said to have taken the title deed to the land and the Protestor put caution on the land. The Petitioner Lucy Wanjiku Kingara told the Court, the mother left the Title to the land and deposited it in Court. She deposited in the Title in Court as a security/bond for one of the brothers who had a criminal case in Cr. Case. 1146/2003.

The Sister, Patricia Muthoni Kingara also informed the Court that they did not refuse to allocate the land but did not have the Title it was deposited in Court. They promised once they got the Title they would proceed to distribute the land accordingly.

The Court directed the parties to the High Court Archives where they retrieved the Title Deed. On the hearing date, they had the Title Deed and asked this court to determine the dispute.

Therefore, in terms of the proposed distribution of land should be as follows;

Since Title Deed has been returned and then issue is one of subdivision of land. The application of confirmation of grant is amended on the mode of distribution to take into account;

- a. The three (3) children of the deceased
 - 1. Patricia Muthoni
 - 2. Lucy Wanjiku

Michael Mbuthia Kingara (deceased represented by the Protestor

- 3. Elizabeth Wambui Mbuthia

- b. L. R. No. 250/GITHUNGURI

be shared in three (3) equal parts

- 1. 1/3 to Patricia Muthoni
- 2. 1/3 to Lucy Wanjiku
- 3. 1/3 to Elizabeth Wambui Mbuthia

- c. The division to take into account where each of the parties resides and not to be moved.
- d. The affidavit of protest is upheld and the confirmation of grant application amended as shares are indicated.
- e. No orders as to costs.

Lucy Wanjiru Kingara: I am asking the Court to reconsider the division of L. R. 250 Gitunguri. I was allocated ½ and Michael Mbuthia ½ as we were also allocated Githunguri/Riuku/T.97 ½ for me and ½ for Michael Mbuthia's wife.

Patricia Muthoni Kingara: I was given by mother one (1) acre of the land as I did not get any other land.

Elizabeth Wambui Mbuthia: I was allocated ½ acre in L. R. 250 Githunguri and ½ in Githunguri/Riuku/T.97.

The affidavit of protest is dismissed and the Grant is confirmed in terms of the paragraph 5 of the affidavit in support of the Application of 22/3/2011. The division of hereinabove is withdrawn.

Read and signed at Nairobi this 4th Day of November, 2014 in open Court.

In the presence of all the parties.

M. MUIGAI

JUDGE