



IN THE HIGH COURT OF KENYA AT MURANG'A

SUCCESSION CAUSE NO 322 OF 2014

(FORMERLY NYERI HIGH COURT SUCC CAUES 350 OF 2011)

IN THE MATTER OF THE ESTATE OF SIMON KIBE GICHINGI-DECEASED

J U D G M E N T

1. This judgment concerns the **summons dated 29th March 2012** for confirmation of the grant issued herein to the Administrator, **Josephine Njoki Kibe**, on 20th September 2011. In her supporting affidavit the administrator listed the survivors of the Deceased as the following -

- i. **Josephine Njoki Kibe.....wife**
- ii. **Peter Mwangi Kibe.....son**
- iii. **John Gichigi Kibe.....son**
- iv. **Samuel Kiritu Kibe.....son**
- v. **Juliah Nyambura Kibe.....daughter**
- vi. **Sarah Wangui Kibe.....daughter**
- vii. **Nancy Waithera Kibe.....daughter**

2. This list is in a consonance with the **Chief's letter dated 21st February 2011** and also the affidavit sworn in support of the petition for grant (**Form P & A 5**). The Administrator is the Deceased's widow while all the other dependants are her children with the Deceased. They are all adults.

3. The Administrator has proposed distribution at paragraph 6 of the supporting affidavit as follows -

(i) LR LOC. 8/GATARA/928 to be registered in the names of Josephine Njoki Kibe, Juliah Nyambura Kibe, Sarah Wangui Kibe and Nancy Waithira KIBE jointly.

(ii) LR LOC. 8/GATARA/929 to be registered in the names of Peter Mwangi Kibe as sole proprietor.

(iii) LOC.8/GATARA/930 to be registered in the names of John Gichigi Kibe as sole proprietor.

(iv) LOC.8/GATARA/931 be registered in the name of Samuel Kiritu Kibe as SOLE PROPRIETOR.

4. One of the dependants, Peter Mwangi Kibe (apparently the eldest son) filed an **affidavit of protest dated 22nd June 2012** against the mode of distribution proposed by his mother. He counter-proposed distribution as follows -

(i) LOC. 8/GATARA/929 to go to Peter Mwangi Kibe

(ii) LOC. 8/GATARA/930 to go to John Gichigi Kibe

(iii) LOC. 8/GATARA/931 to go to Samuel Kiritu Kibe

(iv) LOC.8/GATARA/928 to be shared equally among Peter Mwangi Kibe, John Gichigi Kibe and Samuel Kiritu Kibe with Josephine Njoki Kibe having a life interest.

5. It is to be noted that whereas the Administrator has catered for all the children of the deceased in her proposed distribution, Peter Mwangi Kibe has completely disinherited the daughters of the Deceased in his proposed distribution. He has stated in his affidavit that his proposed distribution reflects the wishes of the Deceased. As it turned out, Peter Mwangi Kibe did not attend court at the hearing of the contested summons for confirmation, despite service on him on of hearing notice at his home on 12th September 2014. So, he did not offer any evidence of the Deceased's alleged wishes.

6. The proposed distribution by the Administrator is in consonance with the law and equity. Distribution as proposed by Peter Mwangi Kibe is neither equitable nor fair, and it is certainly not in consonance with the law. It seeks to disinherit the Deceased daughters, apparently upon the sole ground that they are daughters and not sons.

7. In the event I will dismiss the protest by Peter Mwangi Kibe. I will confirm the grant as sought and direct that distribution shall be as proposed by the Administrator at paragraph 6 of the supporting affidavit. Parties will bear their own costs. It's so ordered.

DATED SIGNED AND DELIVERED AT MURANG'A THIS 5TH DAY OF DECEMBER 2014

H.P.G. WAWERU

JUDGE