



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYERI

SUCCESSION CAUSE 46 OF 2001

ESTATE OF MUYA WANJAMA alias MURIGO WANJAMA – DECEASED

SAMUEL MWANGI WANJAMA.....PETITIONER

versus

JOSPHINE WANJURI RIUNGE.....OBJECTOR

RULING

This ruling relates to an objection to the application for the confirmation of grant of letters of administration to the estate of MUYA WANJAMA. The petitioner and the objector were identified as the beneficiaries to the said estate and the only issue in dispute was the proposed mode of distribution.

According to the objector in her affidavit of protest which is headed Replying Affidavit the petitioner took it up himself to distribute the land to the surviving dependents as follows:

- a) *Muya Wanjama Loc. 10/Kahuti/915 – 2.0 (it should be noted that this is the subject matter of this ruling.***
- b) *Josephine Riunge Loc.10/Kahuti/916 – 3.1***
- c) *Mwangi Wanjama Loc.10/Kahuti/914 – 4.3***

She further stated that during demarcation the applicant/petitioner further unlawfully disposed off four (4) acres of land belonging to their father Wanjama Murigo and that it was further agreed on the demise of Muya Wanjama would form part of the land to be inherited by her family and that she is in actual occupation of the said land.

The petitioner filed a further affidavit wherein he proposed that the subject matter of this ruling be shared equally in place of his earlier proposal to be shared as follows:

Mwangi Wanjama – 1.2 acres

Josephine Wanjiru Riunge. 0.8 acres

I have noted that the petitioner did not offer any rebuttal to the objector's contention that it was agreed that the same inherit the entire land neither did he reply to the contention by the objector that her and her family occupies the subject land.

I have noted that this matter proceeded for hearing before the Murang'a Magistrate's court but the

proceedings have not been typed and that the parties agreed that this protest be disposed of by way of written submissions and affidavit.

To my mind this matter should have been disposed of by way of oral evidence since there are issues raised by the objector which needed confirmation.

Be that as it may I will try to make a just ruling based upon material placed before me. I have also noted that the parties have tried to present evidence through submissions which to my mind is not the right procedure.

The petitioner in his submissions filed on 25th January 2012 stated that on 8th June 2002 the petitioner was appointed the administrator of the estate of Muya Wanjama and that it was at the stage of confirmation of the grant that the objector filed the present objection. He has given the family tree confirmation that none of the parties herein has a better claim over the state than the other as the two fall in category a of section 39(1) of the Law of Succession Act in the degree of consanguinity. He therefore proposes that the estate be shared equally.

In an attempt to reply to the objectors affidavit through submission which I have pointed out is not the right avenue he states that each of the three children of Wanjama Mirigo were alive during land consolidation and demarcation and that each got their own parcels of land as stated by the objector and that if nobody complained during the said time why would the objector complain now. He does not deny that the petitioner disposed off 4 acres of the family land but only state that they should have raised the issue then.

As I have pointed out the petitioner is silent on paragraph 9, 10 and 11 of the objectors affidavit.

The objector in her submission filed on 20th July 2012 has also stated that the deceased was given 2 acres of land which is currently occupied by the objectors sons. It is submitted that there exist no limitation of time in the Succession Act within when what is wrong can not be set right. It is submitted that while distributing his father's property the petitioner kept the largest chunk for himself and chose to give the objector and the deceased less than what they were entitled to.

The objector therefore proposes that to have an equivalent of 4.5 acres with the petitioner she would be entitled to 1.4 acres of the 2 acres

She therefore prays that the whole land be given to her.

As I have pointed out this was a matter better disposed of by way of oral evidence as it seems that there are issues which would have guided the court in reaching a just ruling which have not been submitted and I have identified the following issues:

- a) Was it the petitioner who distributed the family land to the parties herein during demarcation and if yes what guided his distribution?***
- b) Did the petitioner dispose off 4 acres of the family land?***
- c) Was there any agreement that the petitioner would inherit the suit land?***
- d) Is the suit land being occupied by the petitioners children and if so since when?***
- e) Would the proposed mode of distribution displace people who are not before the court.***

Since the petitioner had proposed to distribute the suit land herein in the ratio of 1.2 to 0.8 and having taken into account the submissions herein and also the applicable law I therefore order that the said land be distributed as follows:

a. *The objector 1.4 acres*

b. *The petitioner 0.6 acres*

My mode of distribution herein is guided by the fact that the issue of the earlier distribution of the family land by the petitioner has not been controverted and the number of family members between the objectors and the petitioner. I have also taken into account the issue of the occupation of the subject land by the objectors children which have also not been rebutted.

Each party shall meet their own cost.

Dated and delivered at Nyeri this 11th day of October 2012.

**J. WAKIAGA
JUDGE**

Read in open court in the absence of parties and their advocates.

**J. WAKIAGA
JUDGE**