



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT EMBU

Civil Appeal 40 of 2005

REBECCA VETA PHILIPAPPLICANT

VERSUS

**MARGARET WANJIRU PHILIP.....
RESPONDENT**

JUDGMENT

The Appellant and Respondent in this appeal were appointed Co-administrators to the estate of their late husband Jamiu Karanja Alias Philip Jamiu. They could not agree on the mode of distribution of the estate and so the matter was heard by way of viva voce evidence.

Following the hearing, the learned trial magistrate Mr. Onyiego rendered the Judgment dated 20/5/2005. He confirmed the grant of letters of administration to both widows and ordered that the deceased's estate be distributed as follows from the Land Parcel No. KAGAARI/KIGAA/867:-

- | | |
|-----------------------------------|-------------------|
| <i>(i) REBECCA VETA PHILIP</i> | <i>- 0.01 HA</i> |
| <i>(ii) MARGARET MARIGU</i> | <i>- 0.01 HA</i> |
| <i>(iii) ISAAC NJUE NJAMIU</i> | <i>- 0.04 HA</i> |
| <i>(iv) JACOB KARIUKI NJAMIU</i> | <i>- 0.024 HA</i> |
| <i>(v) JOSEPH NJIRU NJAMIU</i> | <i>- 0.024 HA</i> |
| <i>(vi) ALFRED MWANIKI NJAMIU</i> | <i>- 0.024 HA</i> |

The learned trial magistrate also made a finding that plot KAGAARI/GIKUURI/T217 did not form part of the estate of the deceased as the Title Deed was in somebody else's name. The Appellant felt aggrieved by the said distribution and she therefore filed this Appeal through Njeru Ithiga & Co. Advocates. She relies on 6 grounds of Appeal as hereunder:-

1. *That learned Resident Magistrate erred in law and fact and seriously misdirected himself by finding that land parcel No. KAGAARI/GIKUURI/T.217 does not form part of the estate of deceased NJAMIU KARANJA and therefore not available for distribution to the dependants in total disregard of the overwhelming evidence adduced by witnesses.*

2. *That the learned Resident Magistrate erred in law and fact and seriously misdirected himself in finding that estate of deceased NJAMIU KARANJA comprised only of land parcel KAGAARI/KIGAA/867 in total disregard of the evidence adduced.*
3. *That the learned Resident Magistrate erred in law and fact by disregarding the daughters of the deceased NJAMIU KARANJA PHILIP namely ESTHER WANJUKI NJAMIU, JAELI NDARAGA NJAMIU, SAFERIA GATAVI NJAMIU and RISPHER WARUE NJAMIU in the distribution of the estate of the deceased.*
4. *That the learned Resident Magistrate erred in law and fact and seriously misdirected himself in awarding ISAACK NJUE NJAMIU a bigger share (0.04 Ha) of the estate of the deceased than all the other dependants without any basis or evidence.*
5. *That the learned Resident Magistrate erred in law and misdirected himself in totally disregarding the evidence of the Appellant and her witnesses and considering favourably only the evidence of the respondent and her witnesses as to what constitutes the estate of the deceased and distribution of the same.*
6. *That the learned Resident Magistrate erred in law and misdirected himself in ordering the grant of letters of Administration issued to both the Appellant and the Respondent to be confirmed along the terms proposed in the Judgment which Judgment the Appellant now appeals against.*

She has asked the court to allow the appeal and set aside the said Judgment; revoke and/or annul the confirmed grant and distribute the estate of the deceased fairly to all dependants. The Respondent opposed the appeal through Mr. Nyaga Advocate. Both counsel however agreed that land parcel No. KAGAARI/GIKUURI/T 217 formed part of the deceased's estate. They asked the court to include the same in the schedule of properties. The thrust of the appellants grounds of appeal is that the deceased's daughters were left out of the distribution (ground 3). According to the Respondent however, even in their proposals on the mode of distribution, neither of them had made any provision for the daughters reason being that they are married. On this point, I would say that none of the so called daughters have appealed against the said distribution. They were married and were not dependants of the deceased when he was alive. The attempt to now drag them into this cause is in my view belated and an afterthought which I will not entertain. Nothing stopped the appellant from including them in her proposals herself and so she cannot blame the court for that. That ground is not therefore sustainable. The other contention appears to be that one of the sons was given a larger portion of 0.04 Ha as opposed to the 0.024 Ha given to the other sons. I have perused the proceedings before the subordinate court. A document was produced in exhibit which was said to be the will and last testament of the deceased. He had indicated how his land would be inherited and even threatened to curse those who contested that mode of distribution. I have noted in the testimony of the Respondent before the trial court that she did not challenge the so called "will." The learned trial magistrate was in order to apply the said document. I nonetheless note that the portion of 0.04 Ha was not meant to be for Isaack alone. Indeed it was supposed to belong to the deceased himself and Isaack. There was therefore no justification for Isaack to be given the entire 0.04 Ha while the other sons were getting the 0.24 Ha. I agree with the appellant that there was no basis laid for Isaack to get a larger share than the others. For that reason, I will interfere with the said distribution. The Appeal therefore succeeds in part and the same is allowed on the following terms:-

1. *The Grant of letters of administration granted jointly to the Appellant and Respondent will not be revoked as there is no basis for such revocation.*
2. *Plot No. KAGAARI/GIKUURI/T 217 be included as part of the deceased's estate as consented to by both parties.*
3. *All the 5 listed sons of the deceased to get equal shares out of plot No. KAGAARI/KIGAA/867.*
4. *The portion that was supposed to be given to the widows to remain as 0.01 Ha for each.*

5. *That plot No.KAGAARI/GIKUURI/T 217 is too small to be split into seven pieces. The same will therefore be sub-divided between the 2 widows in equal shares.*
6. *The earlier certificate of confirmation be and is hereby set aside and the same be replaced with a fresh one reflecting the mode of distribution as per this Judgment.*
7. *This being a family matter, I order that each party will bear its own costs of this appeal.*

W. KARANJA

JUDGE

Delivered, signed and dated at Embu this 1st day of July 2009.

In presence of:-Mr. Ithiga for Appellants.

W. KARANJA

JUDGE

1/7/2009.