



REPUBLIC OF KENYA

IN THE HIGH COURT

AT MERU

Succession Cause 39 of 1996

IN THE MATTER OF THE ESTATE OF MAGAMBO GITURA (DECEASED)

KAARIA MAGAMBO PETITIONER

VERSUS

JEMA IGOKI M'MAGAMBO GITURA OBJECTOR

JUDGMENT

This judgment relates to the distribution of the estate of Magambo Gatura, deceased. The issue of distribution was heard by way of *viva voce* evidence. PWI, Igoki stated that she was the wife of the deceased. The petitioner she said was the son of Sabella Munyange. She stated that Sabella deserted the deceased leaving behind her two children namely Kaari Magambo, the petitioner herein and Lydia Gakii. According to PWI, Sabella got re-married to someone else after deserting the deceased. This evidence of re-marriage was denied by the petitioner and his witnesses. They all stated that Sabella had continued to reside on the deceased land even after the deceased re-married PWI. DWII Kahoro Koome impressed me as an honest witness. He particularly emphasized that Sabella had all along resided at the deceased home. Having considered the evidence that is adduced before court, I make a finding that Sabella is a wife of the deceased and that she had not re-married. The Law of Succession Act Cap 160 defines a wife as:-

“Includes a wife who is separated from her husband.”

That being so, I find that Sabella is entitled to inherit from the estate of the deceased. PWI proposed that

the suit property of the deceased be distributed amongst all the children of the deceased, that is, her children and children of Sabella. She also proposed that she gets one acre of land. She did not distribute any land to Sabella. She included all the daughters of the deceased who are married but she gave the sons more land than the married daughters. I am aware that there could be instances where married women if they receive an inheritance from their father's home, the same would cause conflict and objection from their husbands. In this case, none of the daughters appeared to give evidence in support of their claim of their father's property. If an objection as I have stated before is raised by a husband of a married daughter, more than not such a land ends up being taken over by her brother. Bearing that in mind, I do accept the argument raised by the petitioner that if distribution was to follow the proposal of PWI, that family would end up having more land than the petitioner's family. It should be noted that in making the comment as I do in this judgment, I am not in any way discriminating against married daughters and it cannot be the basis of necessarily stating that married daughters cannot inherit from their deceased fathers. It is however the impression I got as I received evidence in this case. PWI in evidence stated that Philip Muriuki was not a son of the deceased. The petitioner's witnesses also confirmed that indeed he was not a son of the deceased. In my view, there was no sufficient evidence brought before court to lead me to find that he is entitled to inherit the land of the deceased. Having considered the rivalry evidence adduced before court and having considered the party's written submissions, I find that the most equitably distribution of the estate of the deceased would be that the two wives and their sons would get the land. I therefore order that a grant be confirmed as follows:-

Nkuene/Ngonyi/339 be distributed to Njema Igoki Magambo and Sabella Munyange Magambo each one of them to get 1 acre each. The balance of the acreage is to be distributed equally between,

(a) Kaaria Magambo

(b) Lawrence Makuyu Magambo.

There shall be no orders as to costs.

Dated and delivered at Meru this 5th day of November 2009.

MARY KASANGO

JUDGE