



**REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA  
AT EMBU**

**Succession 281 of 2002**

**IN THE MATTER OF THE ESTATE OF GICOBİ KAMANU.....DSD**

**AND**

**WANGIGI KAMANU.....PETITIONER**

**VERSUS**

**KAMANU MUCHIRI.....OBJECTOR**

**JUDGMENT**

On 21/9/2000 the Applicant filed Summons for confirmation of grant before expiration of 6 months. The application was supported by affidavit sworn on the same date disclosing the identity of beneficiaries the assets and the distribution Mr. Kamanu Muchiri filed a protest soon thereafter objecting that the petitioner has sold a portion of land where deceased first wife was buried against family wishes or consent and that since deceased had two wives the land should be subdivided equally among the two wives.

In reply the petitioner said estate belonged to applicant's first born son not her husband. The protester is son of first co-wife and has no interest in this deceased estate. However the deceased assets are distributed to all children of the deceased husband including the protester. The deceased had left no children or widow. An amended affidavit for distribution was filed and under court orders it was served upon the protester who still wanted to prosecute his protest. The court ordered that he do file an affidavit of his proposed distribution. The protester Kamau Kamanu filed an affidavit in the estate of Kamanu Nyaga not Gichobi Kamanu. He does not disclose what assets of Kamanu to be shared. The copies of certified green card in respect of **Ngariama/Ngiriambu/29** shows land was registered in the name of Gichobi Kamanu on 9/6/1967. It is the only asset stated in affidavit in support of petition sworn on 5/6/1999 and it is the same piece of land the petitioner seeks to distribute in the amended affidavit. Against that background the parties gave oral evidence and called witnesses in court. The protester confirmed the deceased Gichobi was the son of second mother. He was a step brother to the protester. He left no survivors. He proposed that the land **29/Ngiriama/Ngiriambu** measuring 10.20 acres be shared equally among all the survivors. The father of beneficiaries was alive when Gichobi (son) died. The father never tried to recover land from the estate of his son. The protester insisted the land was of his father not step brother. The witnesses of protester supported his evidence.

However no evidence was offered that deceased Gichobi was registered proprietor by way of gift the value of which was recorded as Shs.3,060/= . The allegations that the petitioner had sold portion of land were not proved. Also allegation that the petitioner had given land to strangers were not proved. Petitioners witnesses No. 2 Peter Murage Pius gave credible evidence. He said that when the land was

being allocated protester had gone away with his mother. He testified that the protesters sisters were married and resided in their homes.

Upon considering the evidence offered by the parties I have now to look into the provisions of law. Firstly, it is my finding that the plot to be shared was registered in the name of deceased Gichobi son of the Petitioner. He was given as a gift. There is no evidence offered to challenge this title. There are no conditions attached to the title. The inheritance in a situation like this is governed by Section 39 of Succession Act the deceased's Gichobi land shall devolve to his surviving mother only. As it is she wants to distribute the land among brothers and sisters and half brothers and half sisters. Since she is alive it is for her to propose how shares of the brothers step brothers and sisters should be allocated. It is only if she was dead that there siblings would take equally.

I therefore find the proposal by protester without merit. The proposals put forward by the petitioner shall prevail as it appears she has tried to be fair and practical. I therefore confirm the grant and order certificate to issue as in the amended affidavit of the petitioner.

Dated this 1<sup>st</sup> November, 2007.

**J. N. KHAMINWA**

**JUDGE**

**1/11/2007**

**Khaminwa – Judge**

**Njue – Clerk**

**Mary Wangechi**

**Muchiri Kamanu**

**Both present**

Judgment read in their presence in open court.

**J. N. KHAMINWA**

**JUDGE**