



IN THE COURT OF APPEAL OF KENYA
AT NYERI

SUCCESSION CAUSE 547 OF 2008

IN THE MATTER OF THE ESTATE OF THERU NDIRANGU ALIAS THERU W/O NDIRANGU – DECEASED

SEBASTIAN WACHIRA NDIRANGU.....PETITIONER

VERSUS

JOHN KARAGO NDIRANGU.....PROTESTOR

JUDGMENT

The Grant of Letters of Administration intestate in respect of the Estate of Theru Ndirangu alias w/o Ndirangu, deceased, was made to **SEBASTIAN WACHIRA NDIRANGU** hereinafter referred to as the “petitioner” on 14th April 2009. The Petitioner has now taken out the summons for Confirmation of Grant dated 9th November 2009 in which he applied for the grant to be confirmed. He swore two affidavits in support of the Summons. **JOHN KARAGO NDIRANGU**, hereinafter referred to as the “Protestor, filed an affidavit of Protest to oppose the Summons for Confirmation of Grant. This court directed the Protest and the Summons for Confirmation of Grant to be determined by affidavit evidence and by written submissions.

I have considered the material placed before this court and the written submissions filed by both sides. The Petitioner and the Protestor are sons of the deceased. In the petition it is stated that the deceased was survived by the following children:

1. *Joseph Wang’ombe Ndirangu*
2. *Sebastian Wachira Ndirangu (petitioner)*
3. *Anthony Karuri Ndirangu*
4. *Esther Njeri*
5. *Richard Gachura Ndirangu*
6. *John Karago Ndirangu (Protestor)*

The Petitioner identified the assets of the Estate as follows:

L.R. NO. AGUTHI/GATITU/1588 and

L. R. NO. AGUTHI/GATITU/1592.

The Petitioner proposed for the aforesaid properties to be distributed as follows:

“L.R.NO. AGUTHI/GATITU/1588 to be inherited as follows:

- | | | |
|--------------------------------------|---|-----------------|
| 1. JOSEPH WANGOMBE NDIRANGU | - | 0.35 Ha. |
| 2. SEBASTIAN WACHIRA NDIRANGU | - | 0.54 Ha. |
| 3. ANTHONY KARURI NDIRANGU | - | 0.30 Ha. |
| 4. ESTHER NJERI | - | 0.15 Ha |
| 5. RICHARD GACHURA NDIRANGU | - | 0.30 Ha. |
| 6. JOHN KARAGO NDIRANGU | - | 0.30 Ha. |

L.R. NO. AGUTHI/GATITU/1592 – to be inherited as follows:

- | | | |
|--|---|------------------|
| (i) JOSEPH WANGOMBE NDIRANGU | - | 0.15 Ha. |
| (ii) SEBASTIAN WACHIRA NDIRANGU | - | 0.10 Ha. |
| (iii) ANTHONY KARURI NDIRANGU | - | 0.15 HA. |
| (iv) ESTHER NJERI | - | 0.05 Ha. |
| (v) RICHARD GACHURA NDIRANGU | - | 0.05 Ha. |
| (vi) JOHN KARAGO NDIRANGU | - | 0.15 Ha.” |

The Protestor contested the schedule of distribution proposed by the Petitioner on two grounds. First, that the two parcels of land is the subject of **NYERI H.C.C.A.NO. 5 OF 2002**. It is the submission of the Protestor that the application for Confirmation of Grant should be stayed pending the hearing and the determination of **NYERI H.C.C.A. NO. 5 OF 2002**. Secondly, that the land should be shared equally without giving preference to the Petitioner. The Petitioner pointed out that **NYERI H.C.C.A. NO. 5 OF 2002** was concluded. In any case it is stated that the aforesaid appeal was not in respect of the aforesaid parcels of land. With respect, I agree with the submissions of the Petitioner that **NYERI H.C.C.A. NO. 5 OF 2002** was concluded. What remains to be determined is the issue regarding the proposed distribution. The Petitioner is of the view that he is entitled to a slightly bigger portion because he financed the prosecution of **NYERI H.C.C. APPEAL NO. 5 OF 2002**. It is obvious that the Petitioner has proposed to give himself 0.54 Ha and 0.10 Ha from **L. R. NO. AGUTHI/GATITU/1588** and **L. R. AGUTHI/GATITU/1592** respectively. It is apparent that the portions are slightly bigger than the other portions given to the other beneficiaries. It is also alleged by the Petitioner that the distribution is in accordance with the wishes of the deceased. After a careful consideration of the rival submissions, I am persuaded by the submissions of the Protestor that the Estate assets should be shared in equal measures between beneficiaries. The Petitioner’s claim that he spent some of his finances in prosecuting **NYERI H.C.C.A. NO. 5 OF 2002** can only be categorized as a debt to the Estate. The Estate must settle that expense so that what is to be distributed should be the net Estate. I hereby postpone the confirmation of grant and direct the Petitioner to establish his claim against the Estate as a debt after which the net Estate may be distributed in equal measures between the beneficiaries.

Dated and delivered at Nyeri this 11th day of June 2010.

J. K. SERGON

JUDGE

In open court in the presence of Mr. Kimunya holding brief a. Kariuki for Petitioner and the Protestors in person.