



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NYERI**

**SUCCESSION CAUSE NO. 1238 OF 2012**

**IN THE MATTER OF THE ESTATE OF FRANCIS MWANGI MBARIA (DECEASED)**

**REUBEN RUKWARO MWANGI.....PETITIONER**

**SOLOMON WANJOHI MWANGI.....PETITIONER**

**-VERSUS-**

**MARY NYAWIRA MWANGI**

**TABITHA WANGUI MWANGI.....PROTESTERS**

**JUDGMENT**

On the 27<sup>th</sup> July 2012 the Chief Endarasha Location wrote a letter to the Deputy Registrar High Court Nyeri in reference to the estate of Francis Mwangi Mbaria elias(sic) Mwangi Mbaria (Deceased). He stated

*“I have had a meeting with family members surviving the above deceased person and was able to establish the following facts and rightful heirs.*

1. William Nyawira Mwangi Son 41 Yrs
2. George Kariuki Mwangi Son 41 Yrs
3. Newton Gitonga Mwangi Son 37 Yrs
4. Cyrus Waweru Mwangi Son 35 Yrs
5. Justus Gitonga Mwangi Son 32 Yrs
6. Reuben Rukwaro Mwangi Son 31 Yrs
7. Naftali Ndiangui Mwangi Son 26 Yrs
8. Solomon Wanjohi Mwangi Son 24 Yrs
9. John Wachira Mwangi Son 22 Yrs
10. Mary Nyawira Mwangi Daughter Married 59 Yrs
11. Margaret Wambui Mwangi Daughter Married 53 Yrs
12. Rosemary Wambui Mwangi Daughter 51 Yrs
13. Peris Mihiuko Mwangi Daughter 49 Yrs
14. Mercy Wangui Mwangi Daughter 47 Yrs

15. Millicent Muthoni Mwangi Daughter 21 Yrs

16. Tabitha Wangui Mwangi Daughter 42 Yrs

17. Elizabeth Wambui Wamutitu Daughter-In-Law 37 Yrs

He owned the following assets and liabilities;

- 1) NYERI/ENDARASHA/346 approximately 30 HA
- 2) NYERI/ENDARASHA/TOWNSHIP/13(L) 0.44 HA
- 3) NYERI/ENDARASHA/TOWNSHIP/372(L) 0.88 HA
- 4) EUASO NYIRO/SUGUROI/BLOCK V/593 8.9 HA

Attached herewith find photocopies of the certificate of death s/no 191948 and official searches for the above assets.”

The certificate of death showed that the deceased died on the 19<sup>th</sup> November 1990.

All the above beneficiaries signed the consent to the making of the grant of administration intestate to REUBEN RUKWARO MWANGI and SOLOMON WANJOHI MWANGI on the 25<sup>th</sup> October 2012, who filed this cause on the 26<sup>th</sup> October 2012. The only difference in the form P&A5 now was an additional asset MOTOR VEHICLE REGISTRATION NO. KQU 235, and the list of beneficiaries now included the age of each one of them, which I will now add to the chief’s list.

The grant of letters of administration intestate was issued on the 29<sup>th</sup> January 2013 to the two petitioners.

On the 24<sup>th</sup> May 2016, MARY NYAWIRA MWANGI filed an application for the revocation of the grant under section 76(d)(i)(ii) and rule 44(1) of the P7A rules, Law of Succession Act Cap 160 Laws of Kenya.

She averred that the petitioners had neglected to apply for the confirmation of the grant but instead were now involved with intermeddling with it. She annexed a lease agreement between her two brothers George Mwangi and Naftaly Ndiangui as the land lords on one part, and another Peter Mwangi Kaguthi as a tenant on the other entered into on the 22<sup>nd</sup> January 2014 regarding one of the properties forming part of the estate, and a caveat filed by the said tenant in this petition.

The application came for hearing on the 12<sup>th</sup> October 2016. The applicant was directed to serve all the beneficiaries.

On the 25<sup>th</sup> of October 2016 the petitioners filed summons for confirmation of the grant. In this one they made proposals on how the estate should be distributed. During the interim period one of the beneficiaries JUSTUS GITAHU MWANGI died. The 2<sup>nd</sup> petitioner swore an affidavit on the same date to the effect that the said deceased had no wife or children. He annexed the certificate of death.

He also filed a replying affidavit to the summons for revocation of the grant opposing the same. He averred that all the while he had been holding consultations with the other beneficiaries on the mode of distribution of the estate. He blamed the applicant for the delay as she had refused to sign the consent to the confirmation of the grant. He confirmed filing the summons for confirmation and urged the court not to revoke the grant as that would cause further delay. He deposed that all the beneficiaries had now signed the consent except two. He urged the court to dismiss the application for revocation and instead confirm the grant as per his application.

Mary Nyawira filed a further affidavit sworn on the 1<sup>st</sup> November 2016. She contended that she could not have signed the consent because the mode of distribution of the estate was unfair. Secondly that the document she had been served with was unfiled, the annexed consent had been signed by only 7 of the beneficiaries.

The 2<sup>nd</sup> petitioner filed a supplementary affidavit sworn on the 14<sup>th</sup> November 2016. He annexed proceedings of meetings held in the presence of the assistant chief Endarasha where he claimed the beneficiaries had all agreed to the mode of distribution of the estate.

On the 8<sup>th</sup> May 2017 Mary Nyawira and Tabitha Wangui each filed an affidavit of protest against the application for the confirmation of the grant.

Mary’s contention was that the deceased had two wives who had also passed on. His estate was about 100 acres of land. He had 16 beneficiaries. However, the petitioners had in the meantime leased various parcels of the estate and were earning rent which proceeds they were not sharing with the rest of the beneficiaries. That it was the wish of their parents that the home stead be inherited by the daughters. That all the beneficiaries were entitled to an equal share of the estate. In addition, that one property MWEIGA TOWNSHIP L.R NO. 7623/141 0.465 HA had been left out of the list of assets.

Tabitha on her part wondered why the petitioners had allocated the daughters of the deceased only one acre each from the deceased estate. She supported the 1<sup>st</sup> protesters mode of distribution.

The matter came before me on the 10<sup>th</sup> April 2017 when directions were taken. At the same time, it became quite clear that the family was now divided into two. Those for and those against the petitioners proposed mode of distribution.

The matter did not proceed until 8<sup>th</sup> November 2017. The 1<sup>st</sup> protester Mary reiterated what was in their affidavits. She added that the daughters were to get the homestead in together with their other shares. She said she spoke for all her sisters that the distribution was unfair.

The petitioners testified too. Solomon testified first. He told the court that the family held a meeting in 2005 August among many other meetings after which the family agreed to share the everything into two equal parts. According to him this proposal was not taken very well by one side.

Later on he and his brother were given the lime light to proceed with this petition. That they could not share out the property because of the nature of the property. That they were called to a meeting by the area DC, area Assistant chief by one of their sisters and six brothers. After discussions it was found that they had not shared anything to their sister. That that sister said she would be satisfied if each sister was given one acre of land.

During that meeting the DC directed the members of the family to hold another meeting and conclude the issue.

The parties met again on the 15<sup>th</sup> August 2015 where they invited their assistant chief and the area elder and all the beneficiaries. They agreed on how to share the properties, and signed the document which they had filed in these proceedings. He said that they had shared equally with their sister, and that ELIZABETH WANGU their sister in law had received an equal share like all the brothers.

He accused the 1<sup>st</sup> protester of acting in bad faith. That she was comfortable as she had her own home but the brothers did not. That parts of the estate were mired in some controversies, and there was a case to be settled in the ELC court. That the sons to the older brothers were also demanding their share of the land so that they could also settle down. That this cause could easily turn out into a generational dispute.

On cross examination he confirmed that the properties belonged to their parents. He stated that the sisters had no interest in the plots, and they claimed that UASO NYIRO was a remote area. According to him it was not good for his wife to inherit from her father. It would be unfair to her brothers.

He did not think his father would have any problem with his sisters inheriting the property, and that old people would share their properties among their wives.

The 1<sup>st</sup> Petitioner, Reuben Rukwaro testified and confirmed that he agreed with his brother Solomon.

He accused the 1<sup>st</sup> protester of using her resources to frustrate the process, and undo what they had agreed on in 2005. He said their sister said they were happily married and that is why they wanted only one acre each. He said the homestead was just about ½ an acre and yet they had given them one acre each. That each was satisfied with her one acre except the protester. He stated that all the properties had been shared into two equal portions.

In cross examination, he said their father died in young and his mother 14 years after his father, that his sisters were happily married and did not want anything more except the one acre they had been given.

JOHN WACHIRA another brother testified and agreed with his brothers. He said his mother died in the 1980s. That after their father died his sister meaning the 1<sup>st</sup> protester could have filed the succession cause but she never did.

He extended the thread that she was acting in bad faith. That she was well married and had property of her own. That he and his brothers had protected the properties, paid taxes and rates and she never contributed anything. That she had finished educating her children but did not want him to educate his as at the time he was testifying his eldest child was in class three.

That the 1<sup>st</sup> protester had been involved in the succession process all along.

On cross examination he testified that it was fair for his sisters to get only one care from their father's estate because they had signed for the same before the, because they were happily married. According to him it would be unfair for his wife to inherit from her parents as that would be unfair to her brothers.

Parties agreed to file written submissions.

The issues for determination stands out as;

1. Whether the beneficiaries are bound by the mode of distribution made at the DC's on the 15th August 2015
2. Whether the daughters of the deceased deserve more than the one acre 'agreed on'.
3. What is the fair mode of distribution of the deceased's estate?

The protesters position is that the deceased was survived by his two wives and 16 children. The first house had four daughters and four sons.

The second house had three daughters and five sons. He died intestate.

They set out their proposal on their mode of distribution.

The petitioners maintain their position on the mode of distribution. They submit that the 1<sup>st</sup> protester had consented to getting one acre only and was bound by that agreement. In addition, that one acre was more than the homestead she said she was entitled to. Further that the deceased had pointed out where each house was to construct its homestead and no one could change that.

It is amazing how, except for stating that their father had two wives, all through the hearing, neither side of the divide identified who was born to which mother. Neither was it indicated specifically on the summons for confirmation of the grant as to what was going to each house. This family is about daughters and sons.

I have perused the document from the meeting held on the 15<sup>th</sup> August 2015.

An extract from the proceedings of the meeting show as follows;

*KINYATI LAND END/NYI-346*

*After deliberations the family agreed that every daughter is entitled to one acre of land...The land after subdivision by two men will get equal portions in their parcel*

*NGOBIT/SUGUROI PLOT 593*

*The parcel should be divided into two parcels measuring approximately 11 acres each. The parcel be divided among sons*

*NYERI/ENDARASHA/TOWNSHIP/13(L)*

*Should be divided into two among sons...*

*NYERI(END)TOWNSHIP/372(L)*

*The plot be divided by (2) among the two houses (men only) ...*

*COMMERCIAL PLOT MWEIGA L.R NO. 7623/141*

*Allocated to daughters of the deceased and if recovered to be divided in two portions for each house.*

1. WILLIAM NYAWIRA MWANGI SON 41 YRS A
2. NEWTON GITONGA MWANGI SON 37 YRS A
3. CYRUS WAWERU MWANGI SON 35 YRS A
4. SOLOMON WANJOHI MWANGI SON 24 YRS A
5. JOHN WACHIRA MWANGI SON 22 YRS A
6. MARY NYAWIRA MWANGI DAUGHTER 59 YRS A
7. MARGARET WAMBUI MWANGI DAUGHTER 53 YRS A
8. TABITHA WANGUI MWANGI DAUGHTER 42 YRS A
1. REUBEN RUKWARO MWANGI SON 31 YRS B
2. NAFTALI NDIANGUI MWANGI SON 26 YRS B
3. ROSEMARY WAMBUI MWANGI DAUGHTER 51 YRS B
4. PERIS MIHIUKO MWANGI DAUGHTER 49 YRS B
5. MERCY WANGUI MWANGI DAUGHTER 47 YRS B
6. MILLICENT MUTHONI MWANGI DAUGHTER 21 YRS B

7. ELIZABETH WAMBUI WAMUTITU DAUGHTER-IN-LAW 37 YRS B

8. GEORGE KARIUKI MWANGI SON 41 YRS B

Here below is a tabulated comparison of the proposals made by each party.

PROPERTY	BENEFICIARY	SHARE (PETITIONER)	SHARE(PROTESTER)
NYERI/ENDARASHA/ TOWNSHIP/13L	WILLIAM NYAWIRA CYRUS WAWERU JOHN WACHIRA GEORGE KARIUKI REUBEN RUKWARO NAFTALY NDIANGUI	EQUAL SHARES	EQUAL SHARES
NYERI/ENDARASHA/ 346 74.2 ACRES	1.WILLIAM NYAWIRA MWANGI SON 41 YRS A 2.NEWTON GITONGA MWANGI SON 37 YRS A 3.CYRUS WAWERU MWANGI SON 35 YRS A 4.SOLOMON WANJOHI MWANGI SON 24 YRS A 5.JOHN WACHIRA MWANGI SON 22 YRS A 6.MARY NYAWIRA MWANGI DAUGHTER 59 YRS A 7.MARGARET WAMBUI MWANGI DAUGHTER 53 YRS A 8.TABITHA WANGUI MWANGI DAUGHTER 42 YRS A 1.REUBEN RUKWARO MWANGI SON 31 YRS B 2.NAFTALI NDIANGUI MWANGI SON 26 YRS B 3.ROSEMARY WAMBUI MWANGI DAUGHTER 51 YRS B 4.PERIS MIHIUKO MWANGI DAUGHTER 49 YRS B 5.MERCY WANGUI MWANGI DAUGHTER 47 YRS B 6.MILLICENT MUTHONI MWANGI DAUGHTER 21 YRS B 7.ELIZABETH WAMBUI WAMUTITU	HOUSE A DAUGHTERS 1 ACRE EACH SONS 6.8 ACRES EACH HOUSE B DAUGHTERS 1 ACRE EACH SONS 8.3 ACRES EACH	DAUGHTERS 3 ACRES EACH SONS 5.9 ACRES EACH

	DAUGHTER-IN-LAW 37 YRS B  8.GEORGE KARIUKI MWANGI SON 41 YRS B		
NYERI/ENDARASHA/  TOWNSHIP/372 L	ELIZABETH WAMBUI B  SOLOMON MWANGI A  NEWTON GITONGA	0.108 ACRES  0.108 ACRES JOINTLY	EQUAL SHARES
UASO NYIRO/SUGUROI/  BLOCK V/593  <b>21.3 ACRES</b>	1.WILLIAM NYAWIRA MWANGI SON 41 YRS A  2.NEWTON GITONGA MWANGI SON 37 YRS A  3.CYRUS WAWERU MWANGI SON 35 YRS A  4.SOLOMON WANJOHI MWANGI SON 24 YRS A  5.JOHN WACHIRA MWANGI SON 22 YRS A  6.MARY NYAWIRA MWANGI DAUGHTER 59 YRS A  7.MARGARET WAMBUI MWANGI DAUGHTER 53 YRS A  8.TABITHA WANGUI MWANGI DAUGHTER 42 YRS A  1.REUBEN RUKWARO MWANGI SON 31 YRS B  2.NAFTALI NDIANGUI MWANGI SON 26 YRS B  3.ROSEMARY WAMBUI MWANGI DAUGHTER 51 YRS B  4.PERIS MIHIUKO MWANGI DAUGHTER 49 YRS B  5.MERCY WANGUI MWANGI DAUGHTER 47 YRS B  6.MILLICENT MUTHONI MWANGI DAUGHTER 21 YRS B  7.ELIZABETH WAMBUI WAMUTITU DAUGHTER-IN-LAW 37 YRS B	HOUSE B  2.7 ACRES EACH  GEORGE  REUBEN  NAFTALY  ELIZABETH  HOUSE A  2.1 ACRES EACH  WILLIAM  CYRUS  NEWTON  SOLOMON  JOHN	DAUGHTERS 1.1 ACRES EACH except the protester 1.2 ACRES  SONS 1.5 ACRES EACH

	8.GEORGE KARIUKI MWANGI SON 41 YRS B		
MOTOR VEHICLE REG. NO. KQU 235	ALL THE SONS AND THE SISTER IN LAW	ONLY SOLOMON AND REUBEN IN EQUAL SHARES	TO BE SOLD AND PROCEEDS SHARED EQUALLY

From the foregoing it is clear that the parties herein are not in total agreement on the mode of distribution of their father's estate. I think it is important to point out at this juncture that for as long as parties are not in agreement it is left to the court to apply the laid down law and principles to arrive at what the court would consider to be fair and just in the circumstances of the case. The parties herein should consider themselves lucky that their father, perhaps aware of his large family acquired the property which they are now disputing over. Before his death, obviously none of them had acquired any rights over any of the said properties as no evidence was placed before me that the he had bequeathed any property to any of them.

The petitioner's position is that the death of their some of the beneficiaries protected the properties by paying rates and taxes to KRA. However, none of them rebutted the testimony by the protesters, supported by one lease agreement, that they were benefitting financially from the said properties for the last 26 years. That explains the application to have the grant revoked on ground of neglect by the petitioners to have it confirmed. The explanation that the delay was caused by the 1<sup>st</sup> protesters refusal to sign the consent is untenable as she was not bound by her mode of distribution. The petitioners are bound to account on what has been happening with the estate since the death of their father or at least since the time they became administrators.

The meeting of the 15<sup>th</sup> August 2015, attended by all the beneficiaries shows that there were deliberations. However, it does not show any justification as to why the daughter were to get only one acre from their father's estate, or why some properties were to be shared between the two houses but only among the sons or men only. Even the allegation that it is because they were all married and were not interested is not found anywhere in the proceedings.

The list attached to the alleged deliberation is headed 'FAMILY MEMBERS PRESENT' with ID numbers and a signature. On the face of it, it does not state that each family member present was in agreement with what was said there. That was the testimony of the 1<sup>st</sup> protester. That those meetings dis not resolve the matter of sharing the estate with finality. She raised the issue of the 2<sup>nd</sup> protester a sister who was a victim of domestic violence and who had come home, but the brothers had chased her away.

It is the position of the petitioners, based on the proceeding before the assistant chief, their sisters have waived their right to inherit any more than one acre from their parents. However, they are not unequivocal. Nowhere in those proceedings has any specific sister stated that she does not want anything. Neither did any of them testify during the hearing to say they did not want anything. The petitioners and their witnesses position is that for sisters who are married to inherit from their parents is unfair to their brothers. The court is not bound to accept the mode of distribution based on open discrimination of the sisters because inheriting from their parents would be 'disturbing their brothers', or unfair to their brothers, by simply stating that property will be share among 'only the sons' or 'men only' without any justification. To do so would be to allow the perpetuation of discrimination against women for simply being women or girls or daughters. It would be to allow the desecration of the constitutional rejection of such acts, it would be an abdication to protect and defend a very key constitutional principle; non-discrimination.

Even before the promulgation of the Constitution in 2010, Makhandia J (as he then was) **IN RE ESTATE OF SOLOMON NGATIA KARIUKI (DECEASED) (2008) ECLR**, while speaking about the existing provisions of the Law of Succession Act, made a very strong statement on the issue of discrimination against daughters generally in succession matters and he said;

*“The Law of Succession Act does not discriminate between the female and male children or married or unmarried daughters of the deceased person when it comes to the distribution of his estate. All children of the deceased are entitled to stake a claim to the deceased's estate. In seeking to disinherit the protestor under the guise that the protestor was married, her father, brothers and sisters were purportedly invoking a facet of an old Kikuyu Customary Law. Like most other customary laws in this country they are always biased against women and indeed they tend to bar married daughters from inheriting their father's estate. The justification for this rather archaic and primitive customary law demand appears to be that such married daughters should forego their father's inheritance because they are likely to enjoy inheritance of their husband's side of the family.”*

It is unfortunate that despite having the constitution in place for over 6 years and numerous pronouncements by the courts on the issue of discrimination of married daughters and inheritance from their parents, it is still considered evil in some quarters for a daughter who is considered to be happily married and to having property of her own, to express any interest in her parents' estate. She is accused of being selfish, of acting in bad faith, of wanting to fuel a family feud yet she does not live in the 'home', of harassing those who only have their parents' heritage to look up to and nothing else.

Those doing so miss the point. That the fact of marriage per se for both sons and daughters, does not change the fact of being born in a certain home to certain parents. With regard to inheritance of the parents' property, I agree with what was expressed in the words of Kimaru J in **PETER KARUMBI KEINGATI & 4 OTHERS VS. DR. ANN NYOKABI NGUTHI & 3 OTHERS (2014) ECLR**. His Lordship put it this way;

*“as regards to the argument by the Applicants that married daughters ought not to inherit their parents' property because to do so would amount to discrimination to the sons on account of the fact that the married daughters would also inherit property from their parents' in-law, this court takes the view that the argument as advanced is disingenuous. This is because if a married daughter*

would benefit by inheriting property from her parents, her husband too would benefit from such inheritance. In a similar fashion, sons who are married, would benefit from property that their wives would have inherited from their parents. In the circumstances therefore, there would be no discrimination. In any event, the decision by a daughter or a son to get married has no bearing at all to whether or not such son or daughter is entitled to inherit the property that comprise the estate of their deceased parents. ...This court is of the view that the time has come for the ghost of retrogressive customary practices that discriminate against women, which has a tendency of once in a while rearing its ugly head to be forever buried. The ghost has long cast its shadow on our legal system despite numerous court decisions that have declared such customs to be backward and repugnant to justice and morality. With the promulgation of the Constitution 2010, particularly Article 27 that prohibits discrimination of persons on the basis of their sex, marital status or social status, among others, the time has now come for those discriminative cultural practices against women be buried in history.”

I am also in complete agreement with Judge Gikonyo, who put it very clearly in the **MATTER OF THE ESTATE OF M'NGARITHI M'MIRITI ALIAS PAUL M'NGARITHI M'MIRITI (DECEASED) [2017] KLR**, regarding the **Discrimination of daughters in inheritance**;

*From the arguments coming through, it is clear issues to do with discrimination based on gender and sex have emerged. There were bad times in the heavily patriarchal African society; that being born as daughter disinherited you. And so, even the judicial journey to liberate daughters from being so down-trodden by the patriarchal society in Kenya on matters of inheritance has been long and painful. As a matter of fact, due to the constitutional architecture of our nation at the time, before 2010, we only saw pin-prick thrusts and rapier-like strokes by courts on these persistent patriarchal biases. But, things changed when **RONO vs. RONO [2008] 1 KLR 803** delivered the downright bludgeon-blow on these discriminatory practices against women in inheritance; it splendidly paid deference to the international instruments against all forms of discrimination against women especially the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). And, I am happy to say that from thence, there are many cases- and the number is rising by the day as courts implement the Constitution- which states categorically that discrimination in inheritance on the basis of gender or sex or status is prohibited discrimination in law and the Constitution. More specifically I am content to cite the proclamation by the Court of Appeal in the case of **STEPHEN GITONGA M'MURITHI vs. FAITH NGIRAMURITHI [2015] eKLR** that: -*

‘Section 38 enshrines the principle of equal distribution of the net intestate estate to the surviving children of the deceased irrespective of gender and whether married and comfortable in their marriage or unmarried...’

Therefore, a son will not have priority over a daughter of the deceased simply because he is male: all- male and female siblings- are equal before the law and are entitled to equal protection of the law. (See article 27 of the Constitution). Accordingly, the 3<sup>rd</sup> Administrator and her children who are claiming the inheritance of late Festus K. M'Ngaruthi, the son of the deceased are only entitled to the share of their late father. They are not, in the circumstances of this case entitled to more share than the distinct share of each of the two daughters of the deceased simply because the late Festus M'Ngaruthi was the son. The three children of the deceased are entitled to share the net intestate estate of the deceased equally. (all emphasis added)

(See also the Judgment of Judge Kasango in **SAMSON KIOGORA RUKUNGA v ZIPPORAH GAITI RUKUNGA [2011] eKLR**)

It is evident from the foregoing that this court would be failing on its constitutional mandate to uphold a disputed mode of distribution that is based on an open discrimination on the grounds of gender, sex and status. The fact of the equality of the children in the inheritance of their parents' property, the norm. Any exception must have a basis. In this case the sharing of property among the sons only or men only has not been given any legal basis. The same is not tenable.

So what is the acceptable mode of distribution? The deceased died intestate. He was polygamous. At the time of distribution of the estate, there was no widow, only children. Section 40 as read with section 3 of the Law of succession Act apply. As stated herein above *Section 38 enshrines the principle of equal distribution of the net intestate estate to the surviving children of the deceased irrespective of gender and whether married and comfortable in their marriage or unmarried...*’The petitioners did one step correctly. They shared out the estate equally between the two houses. But they faltered when they went on to share the estate among only the sons. That was unacceptable to the protesters. That is contrary to the provisions of the law. They allege that some of the sisters are not interested in their inheritance. None of them testified before me and said so.

The protesters' proposal is also not acceptable to the petitioners.

It came out during the hearing that following the demise of the parents, it was possible the whole estate could be shared out leaving no place to call home for any of the daughters who are married, and there was a plea that the homestead be preserved. I do not think that that is an unreasonable request.

That leaves the court to do what the law requires.

Hence in the interests of justice I make the following orders;

1. The summons for revocation the grant filed by the protester is considered as settled by these proceedings.
2. The homestead said to about ½ an acre be carved out and registered in the joint names of the petitioners and all the daughters to hold in trust for the whole family.
3. That rest of the estate of the deceased herein be and is distributed equally between the houses.

4. That each child is entitled to an equal share of their house's share of the estate. The same be shared equally among the children of each house.

5. No orders as to cost

**Dated, delivered and signed at Nyeri this 13<sup>th</sup> Day of February 2018.**

**TERESIA M MATHEKA**

**JUDGE**