



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NYERI**  
**SUCCESSION CAUSE NO. 241 OF 2009**

**JAMES MWANGI GITIIYA.....PLAINTIFF/APPLICANT**

**LEAH WAITHERERO GITIIYA..... PLAINTIFF/APPLICANT**

**- V E R S U S -**

**MWARA GITIIYA.....DEFENDANT/RESPONDENT**

**R U L I N G**

On 14/7/2006, grant of letters of administration for the estate of Githiya Gathigi alias Githiya Gathege was made to Mwara Githiya in Kigumo SRM Succ. Cause 5/05 she filed summons for confirmation of grant on 28/10/2008 where the beneficiaries were identified as herself,

1. Njinji Githiya,
2. Isaac Ngure Githiya,
3. James Mwangi Githiya,
4. Leah Waitherero Githiya

The properties and shares were; -

1. Plot No. 14 Kangari .....Mwara Githiya} sole proprietor
2. L.R. Loc. 2/Kangari – 1. James Githiya} 2.5acres

Leah Waitherero Ngoiri} joint property

2. Isaac Ngure Githiya }2.5acres sole proprietor
3. Mwara Githiya} 11acres Sole proprietor
4. Njinji Githiya}11 acres' Sole proprietor

The grant was confirmed on 22/8/08. Following this summons for confirmation of grant, James Mwangi Githiya and Leah Waitherero Githiya filed summons seeking the revocation of the grant pointing out that there were other beneficiaries to the Estate whom the administrator had not listed in the petition therefore it was obtained fraudulently.

The summons for revocation of grant was heard. The court declined to revoke the grant but set aside the confirmed grant issued on 22/8/2008 giving the applicants time to raise objection to the mode of distribution of the estate as the court found no grounds to support the summons for revocation.

On 30/5/2014 James Gitiya and Leah Waitherero filed an affidavit of protest as the children and administrators of the Estate of Ruth Ngoiri Gitiya (deceased) daughter of the deceased. There was response by Mwara Gitiya on 23/6/14.

The real issue was that the administrator had failed to take into consideration all the children of the deceased namely;

Tabitha Wanjiru (married died 2011)

Murigi Ndambua (married died 1980)

Jedidah Wanguru Kamau (married died 1976)

Ruth Ngoiri Gitiya (unmarried, mother to protesters & another, died 2000)

Felis Wambui Macharia, (Married)

Naomi Waruguru Mugumura (married)

The protestors proposed that the property Loc. 2/Kangari/227 – 10.93HA be shared equally into three portions.

Ruth Ngoiri – 3.6 HA

Njinji Gitiya – 3.6 HA

Mwara Gitiya – 3.6HA

That plot NO. 14 Kangari Market valued at Ksh. 8,000,000 to be sold and proceeds split into 3 equal shares.

The petitioner/administrator to account for the proceeds/income from plot no. 14 Kangari.

On 24/5/2017 the matter was fixed before me for mention for directions.

The beneficiaries and parties appeared. The petitioner/administrator told the court that they had filed a consent settling the matter in the protest out of court following the death of the protestor.

I have perused the bundle of documents filed on 15/4/2017. The parties, 1<sup>st</sup> decided to act in person and filed the requisite notice.

Then there was a document filed on 13/4/2017 – headed;

“Family consensus on certificate of confirmation of grant and schedule of distribution.” This is signed by all parties except James Mwangi Gitiya whose certificate of death was attached.

Also forming part of the record is an affidavit sworn by the beneficiaries having agreed to withdraw all the applications related to the estate and asking the court to confirm the grant as per their signed consensus.

I have considered the contents of the affidavit and the agreed mode of distribution. Taking into consideration the fact that the only dispute here was the mode of distribution of the estate and the

beneficiaries are in agreement and affirming the provisions of Article 159 of the Constitution on the encouragement of alternative mode of dispute resolution, I find no reason to deny the parties herein their request.

Hence it is ordered that by consent:

A certificate of confirmation of grant to issue in the following terms:

1. LR. Loc. 2/Kangari/227 be shares as follows:

Esther Wanjiru Mwangi .....3.325 acres

Leah Waitherero Ngoiri.....2.67Acres

Isaac Ngure Gitiiya.....3.0Acres

Njinji Gitiiya.....8.14Acres

Mwara Gitiiya.....8.14Acres

2. All applications pending in this cause be deemed as withdrawn with no orders as to costs.

3. The protest in High Court Succession Cause No. 241/09 be deemed as withdrawn with no orders as to costs.

4. Each party to sign the consent

Dated, Delivered and Signed in open Court this 18<sup>th</sup> Day of October 2017 at Nyeri.

**Teresia Matheka**

**Judge**

In the presence of:

Court Assistant Hariet

Leah Waitherero

Isaac Ngure

Esther Wanjiru