



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

**SUCCESSION CAUSE NO. 56 OF 1996**

***IN THE MATTER OF THE ESTATE OF THE LATE ELIJAH KINUTHIA GICHAGA  
(DECEASED)***

**JOSEPH WAINAINA KINUTHIA.....PROTESTOR**

**VERSUS**

**MARGARET WAMBUI KINUTHIA.....APPLICANT**

**JUDGMENT**

Elijah Kinuthia Gichaga (herein “the deceased”) died of what is indicated in his death certificate as “cerebral haemorrhage, trauma” on 2<sup>nd</sup> July, 1984. His son, the protestor herein, petitioned for letters of administration of his estate in the subordinate court at Nyeri, more particularly in **Succession Cause No. 193 of 1987**. The grant of letters of administration intestate was made to him and subsequently confirmed on 20<sup>th</sup> February, 1990.

The record shows that the applicant moved to this Court vide **Miscellaneous Application No. 72 of 1990** seeking to revoke the grant. The application was successful and while allowing that application, the learned Judge Tunoi, J. (as he then was) said as follows:-

***The interests of justice demand that this application be allowed. The applicant has six children of the deceased. She lives on his land. She should not be dispossessed or disinherited. She is not conversant with court technicalities which should not be applied to defeat her lawful rights. The respondent is acting oppressively to deny her, her rightful share of the deceased’s estate. As the widow she ranks the first in granting of letters of administration.***

***The grant of letters of administration of the estate of the deceased Elijah Kinuthia Gichaga made and confirmed to the respondent on 20-2-1990 in S.R.M Succession Cause No. 193 of 1987 is revoked and ordered to be of no effect.***

***The Land Registrar is to be notified that the grant which enabled the issuance of the title of Nyeri/Endarasha/492 to the respondent has been revoked.***

***The respondent shall bear the costs of this application.***

Subsequently, the parties entered some agreement and following their consent on 29<sup>th</sup> October, 1991, the learned judge ordered that all matters in dispute relating to the deceased’s estate including the

determination of heirs and their respective shares be referred to arbitration under the chairmanship of the Divisional Officer, Mwea Division. The arbitral award was to be filed within 150 days of that date.

The award was not filed within the period directed by the court but it was ultimately read out in court on 16<sup>th</sup> October, 1992; according to the award, the applicant was held to be the deceased's wife and so she was given 8 acres of the deceased's 14 acre land, Title Number Nyeri/Endarasha/492 which is the only asset that comprises his estate. The protestor was given the remainder.

The protestor was not satisfied with the award and so he applied to have it set aside on the ground that the chairman of the panel did not take evidence from one of the protestor's witnesses. The application was allowed and on 14<sup>th</sup> September, 1993, the court (Ang'awa, J. as she then was) set aside the award. On 3<sup>rd</sup> June, 1994, the learned judge marked **Miscellaneous Application No.72 of 1990** as closed and directed that **Succession Cause No. 193 of 1987** which had been filed in the magistrate's court by the protestor be transferred to the High Court. The cause was transferred as directed and from what I gather, the succession cause in the magistrates' court is the origin of this cause herein.

By any standards, the petition has a long history and a lot has happened since the deceased's demise 32 years ago. The current dispute that is now the subject of determination in this judgment revolves around the distribution of the deceased's net intestate estate which, as noted, comprises a land parcel **LR. Nyeri/Endarasha/492** measuring approximately 14 acres.

Both the applicant and the protestor were appointed as joint administrators of the deceased's estate in this cause on 27<sup>th</sup> May, 2013; this Court directed that either of them was at liberty to apply for confirmation of the grant. The applicant took the initiative and filed the summons for confirmation on 19<sup>th</sup> February, 2014. Not to be outdone, the protestor filed his own summons for confirmation of the same grant on 3<sup>rd</sup> March, 2014.

Faced with the two summonses seeking to confirm the same grant this honourable Court directed that that the protestor's summons be deemed as the protest to the applicant's summons; the court also directed that the protest be disposed of by way of oral evidence.

At the subsequent hearing of the protest, the protestor testified that the deceased was his father and that his (the protestor's) mother was one Mariamu Wanjiku, who happens to have predeceased his father; she died on 17<sup>th</sup> April, 1982. According to the protestor, his father did not have any other wife besides his mother. He said that he has two siblings, one Mendi Kinuthia and Wanjiru Kinuthia.

The protestor confirmed that the parcel of land registered as **LR. Nyeri/Endarasha/492** was his father's but that he held the title. He insisted that the land is his because he settled the loan, apparently advanced to secure the land. In the affidavit in support of his summons, the protestor proposed to have the land shared out as follows:-

1. David Kinuthia Ngotho – 4acres
2. Charles Maina Wainaina- 4.3 acres
3. Joseph Wainaina Kinuthia and Hellen Wanjiru Wainaina 4 acres
4. Joseph Wainaina Kinuthia- 1 acre
5. Damaris Njoki Muriithi, Elizabeth Wanjiku Thumbi and Tabitha Wanjiru- 1 acre to be registered in their joint names.

The protestor testified also that his mother and the applicant shared the same mother but had different fathers; if I understood him correctly, the protestor's mother and the applicant were first cousins or step sisters, according to his evidence. He denied that the applicant was married to his father. He testified that

after his father died, the applicant left briefly and came back. She constructed a house claiming to be the deceased's wife. He said that the applicant had a husband whom he referred to as one Willy Mbugua and that she did not have any share in his father's estate.

During cross-examination, the protestor admitted that the applicant lives on the land that forms the deceased's estate and that she did live on the same parcel of land even before his father's demise. She continued living on the same land after his death.

The protestor testified that the applicant left after his mother died and came back after six months. According to him, his father died three months after his mother died. I found this part of his evidence to be curious because the protestor himself testified that his mother died in 1982 while his father died in 1984; his father cannot therefore have died three months after his father's death.

The protestor also denied that his father ever had any shares in Endarasha 591 plots Housing and Investment Co-operative Society Ltd even after he was shown a share certificate from that company, bearing the deceased's name.

On the cause of his father's death, the protestor testified that his father died as a result of a road traffic accident and that he was mentally disturbed. He denied having ever assaulted his father.

He also testified that he was aware that the applicant had three sons whom he named as Kamau, Waithaka and Kimani and that they were all living on the same parcel of land.

The protestor's witness, **Mungai Kamau (PW2)**, testified that he knew the deceased because they both hailed from the same clan. He denied ever knowing the applicant and that since he was a clan member he would certainly have known her if she was the deceased's wife.

When cross-examined, the witness testified that he lived in Gacharageini and that he could not tell when the deceased migrated to Endarasha and neither could he tell how the deceased acquired his land. According to him, the deceased died of an illness; he admitted not to have attended the deceased's funeral.

The protestor's second witness **Joseph Kamande Kiarie (PW3)** testified that the deceased was his "father" in the sense his real father and the deceased shared the same father. His testimony was that the deceased moved from Kandara and that he was not aware whether the applicant was his second wife. He said that he saw the deceased in 1992. He could not tell when the deceased's wife died and neither could he tell the deceased's children apart from the protestor. He also testified that the deceased died of sickness and not as a result of a road traffic accident.

On her part, the applicant testified that she got married to the deceased in 1980 when the latter was already married to the late Mariamu Wambui, the protestor's mother. They all lived on the deceased's land except that each of the deceased's wives cultivated an acre of that land.

It was the applicant's evidence that when she married the deceased she had three children only but got three more children with the deceased; one of these children died while two survived the deceased. The deceased, according to the applicant, took in the children she came with and they all depended on him prior to his demise.

The applicant testified that her co-wife died in 1982 but that the deceased died in 1984 through a road traffic accident at Karatina. She testified that the deceased grew mentally unstable after the protestor assaulted him. In fact, the latter was charged and convicted for the offence of assaulting his father and that he was fined Kshs 3000/=.

In her evidence, the applicant testified also that she had been living on the deceased's land but that her house was demolished by the protestor after her husband died; she, however, constructed another house on the same land where she is living to date.

In the course of her testimony, the applicant produced a share certificate in the name of the deceased issued by **Endarasha 591 Plots Housing and Investment Co-operative Society Ltd** showing that the deceased was a fully paid up member of the company. She testified that the proceeds the deceased's membership in the company were always shared between herself and the protestor. She also produced a passbook in which the deceased had authorised the Nyeri District Co-operative Union Limited to allow her make withdrawals from his savings account in her capacity as his wife. The applicant asked the court to give her 8 acres of the deceased's land while the protestor should be given 6 acres. Her basis for asking for a larger share was said to be the decision of the elders of the deceased's clan to compensate her for the suffering that the protestor had subjected her to.

At her cross-examination, the applicant insisted that she was the deceased's wife and indeed she was courted into this marriage by the deceased's first wife; however, she admitted that there was no particular marriage ceremony. She reiterated that she cultivated one acre of the deceased's land in the deceased's lifetime and even after he died. She denied having been married to anyone else.

One of the applicant's witnesses **Vincent Waweru (DW2)** testified that he knew the applicant as the wife of the deceased and that she lived with the deceased on the latter's parcel of land. He had known the deceased since 1963 when he came to Endarasha after they both emigrated from Murang'a to Endarasha where they were allocated land by the government by the Settlement Fund Trustees. At the time, the deceased was married to Mariamu Wanjiku who later died in 1982. According to this witness the applicant was married to the deceased when his first wife was still alive.

The witness testified that upon the demise of the deceased, the protestor attempted to evict the applicant from the deceased's land and even destroyed her house but the elders of whom he was one resisted the protestor's move and constructed another house for the applicant.

Also testifying for the applicant was **Anthony Magura Mugo (DW3)** who said that he met the deceased for the first time at the chief's office in 1983 when he came to report the loss of his identity card and the title deed of his parcel of land; he also reported that he had fought with his son, the protestor herein, over the same title deed. The witness also testified that he knew the applicant as the deceased's wife. When the protestor destroyed her house, the deceased's family and the clan members constructed another house for her.

From the foregoing evidence there is no doubt that the deceased died intestate in 1984 and therefore the administration and distribution of his estate is subject to the intestacy provisions in **Part V of the Law of Succession Act, Cap. 160, Laws of Kenya**. The application of any provisions under that part of the Act in the distribution of the available estate largely depends on the identification of the deceased's survivors or beneficiaries to his estate. Of particular interest in this cause is the question whether the deceased was polygamous and survived by any spouse and thus whether **section 40** of the Act that provides for distribution of an estate in a polygamous family set-up was applicable to his estate.

It is acknowledged by both the applicant and the protestor that the latter was the deceased's child; however, for purposes of distribution of his estate it will also be necessary for this court to determine whether the deceased had any other child or children who are entitled to an inheritance of the deceased's estate before the grant is confirmed. The need to identify the beneficiaries and their respective shares in an intestate estate before a grant is confirmed is not in vain; it is a mandatory requirement under the proviso to **section 73** of the Act; the pertinent part of that provision reads:-

**71. (1) After the expiration of a period of six months, or such shorter period as the court may direct under subsection (3), from the date of any grant of representation, the holder thereof shall apply to the court for confirmation of the grant in order to empower the distribution of any capital assets.**

(2) ...

(a)...

(b)...

(c)...

(d)...

***Provided that, in cases of intestacy, the grant of letters of administration shall not be confirmed until the court is satisfied as to the respective identities and shares of all persons beneficially entitled; and when confirmed the grant shall specify all such persons and their respective shares.***

In the initial petition which the protestor filed in the magistrates' court in 1987, he named himself and his two sisters as the only survivors of the deceased; the sisters were identified in that petition as Medi wife of Ngugi Miruani and Mrs Wanjiru wife of Mwangi. The protestor reiterated the same information in the affidavit in support of his summons for confirmation of grant which he filed in court on 6<sup>th</sup> March, 2014 but named other survivors of the deceased as follows:-

1. David Kinuthia Ngotho (grandson)
2. Charles Maina Wainaina (grandson)
3. Hellen Wanjiru Wainaina (daughter in law)
4. Damaris Njoki Murithi (Married granddaughter)
5. Elizabeth Wanjiku Thumbi (Married granddaughter)
6. Tabitha Wanjiru (married granddaughter)

Though it is not apparent in his affidavit, I gather from the protestor's oral evidence in court that these are his wife and children amongst whom he wants the estate to be shared to the exclusion of the applicant and her children.

The applicant on the other hand named herself and the following persons as the dependants and survivors of the deceased:-

1. Medi w/o Ngugi Miruani (married daughter)
2. Tabitha Wanjiru Mwangi (married daughter)
3. Joseph Wainaina Kinuthia (son)
4. Lucia Wanjiku Karuu (married daughter)
5. Samuel Kamau Kinuthia (son)
6. Laura Wacu Kinuthia (daughter)
7. Moses Gichaga Kinuthia (son)
8. Alice Wanjiru (deceased)

It is evident from the applicant's list that apart from naming her own children, she has acknowledged the protestor and his two sisters as dependants and survivors of the deceased and therefore entitled to his estate. She has denied that the deceased was survived by any other dependants and thereby disputed the protestor's allegation that his own children are the deceased's dependants who also survived him.

According to the evidence of both the applicant and the protestor, they are in agreement that the protestor and his two sisters, Medi and Tabitha Mwangi, are the children of the deceased. What is in dispute is whether the protestor's wife, his children together with the applicant and her children are also entitled to a share of the deceased's estate.

The contestants were in agreement that the protestor's and his sisters' mother predeceased their father; assuming that the applicant was not in the picture as the protestor consistently argued, the applicable law in those circumstances would have been **section 38** of the Act which provides as follows.

***38. Where an intestate has left a surviving child or children but no spouse, the net intestate estate shall, subject to the provisions of sections 41 and 42, devolve upon the surviving child, if there be only one, or be equally divided among the surviving children.***

At the very least, according to this provision, the deceased's estate can only devolve upon his surviving children and not upon his grandchildren if it was to be proved that the deceased was not polygamous and that there was no surviving spouse. This provision effectively means that, as long as the deceased's children are alive, the protestor's children are out of equation in the distribution of the deceased's estate; they simply have no portion in it.

Again, although the protestor's sisters did not participate in these proceedings, there is no evidence that they ever renounced their right to inheritance to their father's estate.

The number of the deceased's children who survived him is contested; while the protestor says that he was survived by three children only, the applicant contended that the deceased was survived by several other children besides the protestor and his two sisters. As to which of the two parties is right, it is just necessary and logical that I have first to find an answer to the question whether the applicant was the deceased's wife because without her the issue of children would perhaps not have arisen.

From the evidence on record, it is not in dispute that the applicant joined the deceased's family in 1980. It was her evidence that she joined that family as the second wife of the deceased with the consent and knowledge of his first wife; in fact, according to her evidence, it is the deceased's first wife who courted her into this marriage, apparently because, she (the deceased's first wife) was ailing. As fate would have it, the deceased's first wife died in 1982 and two years later, in 1984, the deceased himself died.

According to the applicant, she joined the deceased's family with three children of her own; she later got two other children with the deceased. She had a house of her own on the deceased's land; in fact **Anthony Magura Mugo (DW3)** testified that her house was next to that of the deceased's first wife. It was common ground that prior to and after the deceased's death the applicant cultivated part of the deceased's parcel of land. The protestor evicted the applicant from the land and even destroyed her house but with the help of the deceased's clan and the intervention of the provincial administration, the applicant's possession of part of the land was restored; she has lived and cultivated that land ever since.

The applicant testified that the deceased had entrusted her with some of his vital documents including a passbook in which he had authorised her, in her capacity as his wife, to withdraw money or conduct any other transaction on his account with Nyeri District Co-operative Union Limited.

While the protestor admitted that the applicant came to their home in 1980, and that she has continued to live with her children on the deceased's land to date, he disputed the capacity in which she joined his deceased father's family; according to him the applicant was not a wife to the deceased but was merely a relative of the his mother. As far as he was concerned, the applicant was married elsewhere and that her husband was one Willy Mbugua.

The evidence that the applicant came to the deceased's home with children was not controverted; in fact the protestor admitted it. It was also not controverted that the applicant had her own house built on the deceased's parcel of land. Apart from being housed, she cultivated a portion of the deceased's land. She was a co-signatory to his savings account and the basis of her authority transact on this account was her

status-the deceased's wife. More crucially she had at least two children with the deceased. Her testimony was corroborated by two other witnesses who testified that they always knew the deceased and the applicant as husband and wife.

By and large, the applicant's evidence was not controverted and I cannot find any reason to doubt it; in particular I found the applicant herself together with her witnesses to be candid and truthful; the credibility of their evidence is not in doubt. I cannot say the same of the protestor and his witness; his evidence that the applicant was merely his mother's relative and was accommodated in his father's home as such is not convincing. That evidence does not explain why his deceased father took the applicant in together with her children and even went further and sired two other children with the applicant. The protestor's evidence does not also explain why the deceased found it necessary to construct a house for the applicant and allow her cultivate his land; and neither does it explain why the deceased found it fit to authorise the applicant to operate his savings account as his wife.

My assessment of the protestor is someone who was disgruntled by his deceased's father decision to marry the second time after his mother fell ill. The entry of the applicant into their life appears to have been the reason of animosity between them to the extent that at one point the protestor assaulted his deceased father. Although he brought witnesses to discount the applicant's argument that she was the deceased's wife, one of the witnesses who claimed to be related to the deceased testified that he did not know when the deceased moved to Endarasha. He claimed to be from the deceased's clan but he neither knew how the deceased died nor attended his funeral. In my view, this was not the kind of witness that could be said to have been close enough to the deceased as to tell whether he was married to the applicant or not. He in fact admitted that he lived in Murang'a and he could probably not tell what the deceased was up to in Endarasha.

Similarly, his second witness, Joseph Kamande Kiarie, also lived in Kandara in Murang'a County. Not surprisingly he testified that he could not tell whether the applicant was the deceased's wife. He could not tell when the deceased's first wife died and he did not even know the deceased's children apart from the protestor.

The protestor himself was contradictory in his testimony; although he knew that his mother died in 1982 and produced a death certificate showing that his father died in 1984, he contradicted himself when he testified that his father died three months after his mother's death. His evidence was that the applicant left after his mother's death and only came back after six months; the contradiction in his testimony was his fruitless attempt to prove that the applicant was not even at home when his father died.

After evaluating the evidence of both the protestor and the applicant I am inclined to conclude that the circumstances under which the applicant and the deceased lived or cohabited raised a presumption of a lawful marriage.

A presumption of marriage is an English law concept which has been embraced in our local legislation under the **Judicature Act, Cap.8** Laws of Kenya. Its tenor was captured aptly in the recent High Court decision in **Nairobi High Court Succession Cause No. 527 of 1981**, In the Matter of the Estate of Mbiyu Koinange. Under this concept, a lawful marriage will generally be presumed though there may be no positive evidence of any marriage having taken place where a man and a woman have cohabited for such a length of time and in such circumstances as to have acquired the reputation of being a man and a wife. Wambua, J. held in the *Mbiyu Koinange case (supra)*, that this presumption can only be rebutted where there is strong and weighty evidence to the contrary. The learned judge explained it as follows:-

***The presumption is made both where there is some evidence of a marriage ceremony of some sort having been performed followed by cohabitation as husband and wife and also where there is no evidence of any sort of marriage ceremony but there is cohabitation by and acceptance of the parties by the community as such. In both cases a very heavy burden of proof is imposed on the one who wishes to rebut the presumption.***

To answer the protestor who appeared to suggest there was no evidence of any sort of marriage ceremony

to celebrate the applicant and the deceased's marriage, this decision demonstrates that there need not have been a marriage ceremony of sorts for the deceased and the applicant to be deemed husband and wife; it was enough that the two cohabited and held themselves out to their community as a married couple for at least, the four years that they were together before the demise of the deceased.

For reasons I have given, I am satisfied that the protestor's evidence is not sufficient to rebut the presumption of marriage between the deceased and the applicant.

If the deceased married the applicant in his first wife's lifetime, it follows that he was polygamous; it then follows that since the deceased spouse left behind children and since the second spouse survived the deceased, the distribution of his estate would be governed by section 40 of the Act which provides as follows:-

**40. (1) Where an intestate has married more than once under any system of law permitting polygamy, his personal and household effects and the residue of the net intestate estate shall, in the first instance, be divided among the houses according to the number of children in each house, but also adding any wife surviving him as an additional unit to the number of children.**

The Court of Appeal sitting at Eldoret interpreted this provision of the law in the **Eldoret Civil Appeal No. 66 of 2002, Mary Rono versus Jane Rono & William Rono (2005) eKLR**. The learned counsel for the appellant in the appeal urged that in a polygamous set up each house must bear an equal measure of the liabilities as much as it should benefit from an equal share of the deceased's estate; in other words, the liabilities and assets must be divided in such a way that they are shared out equally between or amongst the houses, depending on the number of the houses surviving the deceased. The respondents' learned counsel was of the contrary view; he was of the opinion that the first house should get a larger share of the estate considering, amongst other factors, that it contributed more to the acquisition of the estate.

In the leading judgment by Waki, J.A., the learned judge held:-

***"I think, in the circumstances of this case there is a considerable force in the argument by Mr Gicheru (for the appellant) that the estate of the deceased ought to have been distributed more equitably taking into account all relevant factors and the available legal provisions. I now take all that into account and come to the conclusion that the distribution of the land, which is the issue falling for determination must be set aside and substituted with an order that the net estate of 192 acres of land be shared out as follows:-***

***(a) Two (2) acres for the farm house now commonly occupied by all members of the family be held in trust by the joint administrators of the estate;***

***(b) Thirty (30) acres to the first widow, Jane Toroitich Rono***

***(c) Thirty (30) acres to the second widow, Mary Toroitich Rono***

***(d) Fourteen decimal four four (14.44) acres to each of the nine children of the deceased."***

Although the learned judge appeared to agree with the argument by the learned counsel for the appellant that the estate should be shared out **equally**, he nevertheless stated that the estate **"ought to have been distributed more equitably..."** and proceeded to do exactly that **"taking into account all relevant factors and the available legal provisions."**

While agreeing with the leading judgment of Waki, J.A., Justice Omolo J.A. discounted any notion that the estate should have been distributed amongst the beneficiaries in equal shares because, in the learned judge's view, there is no such requirement under the Act. The learned judge said:-

***"I had the advantage of reading in draft form the judgment prepared by Waki, J.A., and while I broadly agree with that judgment, I nevertheless wish to point out that I do not understand the***

***learned Judge to be laying down any principle of law that the Law of Succession Act, cap 160 of the Laws of Kenya, lays down as a requirement that heirs of a deceased person must inherit equal portions of the estate where such deceased dies intestate and that a judge has no discretion but to apply the principle of equality as was submitted before us by Mr Gicheru. I can find no such provision in the Act.”***

The learned judge proceeded to quote **section 40(1)** of the Act and held that:-

***“My understanding of that section is that while the net intestate estate is to be distributed according to houses, each house being treated as a unit, yet the Judge doing the distribution still has discretion to take into account the number of children in each house. If Parliament had intended that there must be equality between houses, there would have been no need to provide in the section that the number of children in each house be taken into account.***

***“Nor do I see any provision in the Act that each child must receive the same or equal portion. That would clearly work an injustice particularly in a case of young child who is still to be maintained, educated and generally seen through life. If such a child, whether a girl or a boy were to get an equal inheritance with another who is already working and for whom no school fees and things like that were to be provided, such equality would work an injustice and for my part, I am satisfied that the Act does not provide for that kind of equality.”***

What the learned judges appear to me to have espoused is the principal of *fairness* and *equity* in distribution of a deceased’s estate between or amongst polygamous family members surviving a deceased person and who are entitled to inherit his estate. While the number of children in a particular house is an important factor in the determination of the share to be allocated to each house, it is not the only factor; neither is it the controlling factor. The amount each house gets is not contingent upon the number of children in any particular house; there are other considerations which will guide the court’s discretion in the distribution of the estate; for instance, the age of the children and their station in life are factors that the court will necessarily take into account.

Coming back to this case, there is no doubt that the first house had a fewer number of children than the second house though the majority of the children in the latter house are those that the deceased took in when he married the applicant.

In her evidence, the applicant asked for eight acres while she proposed that the protestor should get six acres; the two extra acres she wants more than what she wants the protestor to get, is to ‘compensate’ her for the trouble that the protestor has taken her through over the years.

While the applicant may have been tormented or felt tormented by the protestor since the deceased’s demise, this does not appeal to me to be a sound reason or a good basis for any disparity in the distribution of the estate. The law itself does not say that the court should consider such a reason as one of the factors to be taken into account in the distribution of a deceased person’s estate.

Besides the number of children in each house, what I would consider to be important factors include the fact that out of the entire 14 acres of land, the applicant has only been cultivating one acre since the deceased’s death in 1984. The protestor has been cultivating the rest of the land to the exclusion of the applicant, needless to say that the protestor or the first house has benefited more from the estate than the applicant. However, I have also noted from a copy of the green card that the land was first registered in 1976 but was transferred to the deceased in 1983. It is quite possible that the first house may have contributed, in one way or the other, towards the acquisition of the land.

Equally important to note is the fact that all the deceased’s children are adults and those from the first house may even be of advanced age.

Taking all these factors into account, I have come to the conclusion that it is fair and equitable for land parcel **LR NO. NYERI/ENDARASHA/492** to be shared equally between the first house and the second

house. Accordingly I hereby distribute the land as follows:-

1. First house:

- a) Joseph Wainaina Kinuthia to get approximately 2.33 acres
- b) Medi w/o Ngugi Miruani to get approximately 2.33 acres
- c) Tabitha Wanjiru Mwangi to get approximately 2.33 acres

2. Second house:

Margaret Wambui Kinuthia shall have 7 acres registered in her name subject to a life interest.

The summons for confirmation of grant dated 12<sup>th</sup> February, 2014 is allowed in the foregoing terms and the summons dated 3<sup>rd</sup> March, 2014 is dismissed. Being a family dispute, parties will bear their respective costs. It is so ordered.

**Signed, dated and delivered in open court this 29<sup>th</sup> January, 2016**

Ngaah Jairus

**JUDGE**