

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

SUCCESSION CAUSE NO. 543 OF 2006

**IN THE MATTER OF THE ESTATE OF GITHAIGA THUKU alias THUKU GITHAIGA alias
LIVINGSTONE THUKU (DECEASED)**

JUDGMENT

1. The application for determination is the summons for confirmation of grant dated 26th September 2007. It is brought at the instance of Richard Mwaniki Thuku, the executor of the will of the deceased made on 25th February 2004. He seeks that the grant be confirmed as per the said will. His affidavit in support of the application was sworn on 26th September 2007.

2. An affidavit of protest was lodged in the cause on 25th January 2008, sworn on 19th January 2008, by Stanley Maina Thuku. He stated that the executor had excluded some family members, and asserted that the deceased had in fact made not a written will but an oral one.

3. Several individuals swore affidavits in response to the averments made by the protestor in his affidavit. They all asserted that the deceased had indeed executed a written will on 25th February 2004.

4. That prompted the protestor to file a further affidavit in protest on 21st November 2008, which was filed herein on the same date, in which he pours cold water on the contents of the affidavits sworn in reply to his protest.

5. It was directed on 24th November 2008 that the application would be disposed of by way of cross-examination of the deponents of the various affidavits on record.

6. The hearing herein commenced on 4th February 2015. The executor/applicant testified, and breathed life to his affidavit in support of the application. He also called four (4) other individuals who had sworn the affidavits in reply to the protestor's affidavit of protest. The protestor did not testify nor call any witnesses to breathe life to the averments in his affidavits.

7. As the protestor did not testify the executor's case was not controverted. I have therefore no basis whatsoever for not granting the orders sought in the application dated 26th September 2007

8. The final orders shall be that the grant of probate of written will made herein on 16th June 2006 is hereby confirmed. The estate of the deceased shall be distributed according to the terms of his will executed on 25th February 2004.

9. As the estate comprises of assets situated mainly in Murang'a and Thika, it is hereby directed that the cause herein be transferred to the High Court of Kenya at Murang'a for disposal.

DATED and SIGNED at NAIROBI this 16TH DAY OF DECEMBER, 2016.

W. MUSYOKA

JUDGE

DELIVERED and SIGNED this 20TH DAY OF DECEMBER, 2016.

R. OUGO

JUDGE