

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYERI

SUCCESSION CAUSE NO. 40 OF 1990

**IN THE MATTER OF THE ESTATE OF THE LATE MUIGA S/O GATHIGI alias BATRAM
MUIGA – (DECEASED)**

APOLLO KARIMI MUIGA1ST PETITIONER

ARTHUR WAMBUGU MUIGA2ND PETITIONER

VERSUS

WANGECHI KING'ORI & OTHERSOBJECTOR

BEATRICE MUTHONI GATHIMA1ST PROTESTOR

PURITY MUKAMI GATHIMA2ND PROTESTOR

ANDREW MUIGA GATHIMA3RD PROTESTOR

EDWARD NDIRITU GATHIMA4TH PROTESTOR

GILBERT GATHIGI GATHIMA5TH PROTESTOR

JUDGMENT

On 22nd September, 1999, a grant of letters of administration intestate was given to Apollo Karimi Muiga and Arthur Wambugu Muiga. The duo have now taken up the summons dated 26th October, 2001 in which they sought for the grant to be confirmed. Beatrice Muthoni Gathima, Stanley Mugo Muiga, Purity Mukami Gathima, Andrew Muiga Gathima, Edward Ndiritu Gathima and Gilbert Gathigi Gathima filed affidavits of Protest to resist the summons. When the cause came up for hearing it was directed that the dispute be disposed of by affidavit evidence and by written submissions.

I have considered the rival averments plus the written submissions. The Petitioner proposed to have the Estate to be distributed as follows:

1. **Arthur Wambugu Muiga – A portion of 5.5. Acres out of the land parcel No. Mahiga/Munyange/65 and to hold in trust for himself and his 1st household of the deceased.**
2. **Janet Wangui Muiga and Apollo Karimi Muiga – A portion of 5.5. acres out of land parcel No. Mahiga/Munyange/65 to hold in trust of themselves and the 2nd household of the deceased.**
3. **Elikana Gathigai Wachira – A portion of 1.0 acre out of the said land No. Mahiga/Munyange/65.**
4. **Plot No. 20 Ndunyu Market to be registered in the names of Arthur Wambugu Muiga & Apollo Karimi Muiga in equal shares.**

The Petitioner in paragraph 3 of his supplementary affidavit further proposed to have plot No. 20 Ndunyu market to be registered in the names of Arthur Wambugu Muiga, Richard Gathigi Muiga,

Wangechi Kingori, Gilbert Gituku. In a further supplementary affidavit filed in response to the affidavit of Protest, Arthur Wambugu Muiga further proposed **L.R.NO. Mahiga/Munyange/65** to be shared as follows:

<u>Names</u>	<u>acreage</u>	<u>part marked</u>
Grace Wangechi		
Joyce Wanjiku	1st house	0.29ha
A		
Mary Wanjiru		
Mary Wanjiru	2nd house	
(All being daughters of the deceased		
to hold severally in equal shares per house)		
Apollo Karimi Muiga	0.44 Ha	B
Ndiritu Muiga	0.44 Ha	C
Richard Gathigi Muiga	0.44 Ha	D
Elikana Gathigi	0.35 Ha	E
Stanley Mugo Muiga	0.44 Ha	F
Arthur Wambugu Muiga	0.43 Ha	G
Miriam Muthoni Gathigi	0.43 Ha	H
Gladys Hiuko Wachira	0.43 Ha	I
David Gitahi Karimi	0.43 Ha	J

Beatrice Muthoni Gathima

Purity Mukami Gathima	0.43 Ha	K
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Andrew Muiga Gathima

Edward Nderitu Gathima

Gilbert Gathigi Gathima

(All the Protestors jointly or severally)

Beatrice Muthoni Gathima the 1st Protestor herein, on behalf of the other Protestors rejected the Petitioner's proposal and suggested she be made to hold the share from the Estate due to her deceased's

husband in trust for her children. She averred that she and her Co-Protestors were entitled to inherit 1.35 acres to be excised from **L.R.NO. Mahiga/Munyange/65**. The Protestor further alleged that 0.25 acres of their entitlement should be excised from the Petitioner's share which the Petitioner had agreed during the life time of the 1st Protestor's husband to exchange with 0.25 acres of his said entitlement with a parcel of land they owned at Njoro. The 1st Protestor further proposed for plot No. 20 Ndunyu market to be sold and for the proceeds to be shared equally between the two houses. It is also proposed that the compensation for the parcel of land lost to pave way for the construction of Ndunyu-Njigari road be shared equally between the houses. In the alternative the aforesaid amount to be used to meet survey fees to partition the land in question. Stanley Mugo Muiga (*2nd Protestor*) also filed an affidavit of Protest stating that since all the deceased's children are all aged over 40 years, then there is no need to transmit the assets of the Estate to the Petitioner to hold in trust for them. It is further argued that the deceased had inter vivos apportioned each beneficiary his/her share of land. This Protestor further alleged that the deceased had given him 1 acre housing the homestead to be given to unmarried girls or any girl child who may be married but happens to return home. He confirmed that he is aware that the deceased had bequeath 1.0 acre to his nephew Elikana Gathigi. Stanley Mugo Muiga made various proposals on distribution in paragraphs 15,16,17,18 and 20 as follows:

10 acres be shared at first, equally between the two houses and thereafter, the 5 acres meant for the 1st house be shared equally by the 5 sons.

Since four(4) of the sons of the 1st house are deceased as mentioned in paragraph 5, their shares be registered in the names of their respective wives, as named in paragraph 6 and the surviving sons namely Arthur Wambugu(Petitioner) to get his own share.

5 acres be shared equally among the four(4) sons of the 2nd house (Richard Gathigi, Apollo Karimi (Co- Petitioner) Nderitu Muiga & Stanley Mugo.

The one(1) acre mentioned in paragraph 11 be registered jointly in the names of the three daughters Rosabella Wanjiku, Grace Wangechi, Mariam Wanjiru and our mother Janet Wangui Muiga.

The shares of the Plot No. 20 Ndunyu Market be shared first equally between the two houses, and thereafter among the five(5) sons and four (4) sons being the 1st and 2nd household respectively.

Let me state from the outset that I am in agreement with the 2nd Protestor that since all the beneficiaries are adults then there is no need for anyone to hold any entitlement from the Estate in trust for the other. I am further convinced that the deceased had bequeath 1 acre to Elikana Gathigi Wachira to be excised from **L.R.No. Mahiga/Munyange/65**. I am further satisfied that the 1 acre was set aside to accommodate the homestead which would be available for the use by the deceased's unmarried daughters and those who came back home. In essence two (2) acres has to be excised from **L.R. No. Mahiga/Munyange/65** leaving the balance of 10 acres which should be shared equally between the two houses. Each house to share out equally between members of each household. For the avoidance of doubt, 5 acres should be given to each house. The houses are identified as follows:

1st House (Jane Mukami)

Richard Gathigi	– deceased
Apollo Karimi	- deceased
Stanley Wachira	- deceased
Wilson Gathema	- deceased
Arthur Wambugu	- (2nd Petitioner)

Mariam Wanjiru Mbugua - married.

2nd House (Janet Wangui)

Richard Gathigi -

Apollo Karimi - (1st Petitioner)

Nderitu Mugia -

Stanley Mugo - (2nd Protestor)

Rosebell Wanjiku

Grace Wanjiku

Mariam Wanjiru - unmarried Daughters

I think the proposal by the 2nd Protestor that the five sons in the 1st house should share equally the 5 acres due to their house is plausible. The widows of the deceased sons should succeed their husbands, hence their entitlements be registered as such. I also find the proposal by the 2nd Protestor that the 5 acres due to the 2nd house be shared equally between four sons. I am also convinced that it is fair to have plot No. 20 Ndunyu market sold and the proceeds of compensation from the Government be shared equally between the houses.

In the end, I find the affidavit of Protest of Stanley Mugo (*2nd Protestor*) to be with merit. Consequently, the grant is ordered confirmed as proposed by the 2nd Protestor. Since the dispute pitted sibling, I order that each party meets his or her own costs.

Dated, signed and delivered this 23rd day of August, 2013

J.K. SERGON

JUDGE

In open court in the presence of Mr. Muchiri for the 1st – 5th Protestor

N/A Karanja Mbugua for Petitioner

Kingori holding brief for Gichuhi for 2nd Protestor