



**REPUBLIC OF KENYA**

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

**SUCCESSION CAUSE NO. 285 OF 2005**

**IN THE MATTER OF THE ESTATE OF MIRIGO KARUIRU alias LUCY MIRIGO KARUIRU -  
(DECEASED)**

GEOFFREY NDEGWA KARUIRU ..... PETITIONER

VERSUS

PETER KARUIRU KABURI ..... PROTESTOR

**JUDGMENT**

On 16th October, 2008 a grant of letters of administration intestate in respect of the Estate of **Mirigo Karuiru alias Lucy Mirigo Karuiru**, deceased was made to **Geoffrey Ndegwa Karuiru** and **Peter karuiru Kaburi**. Geoffrey Ndegwa Karuiru hereinafter referred to as the Petitioner is now before this court seeking to have the grant confirmed vide the summons dated 28th November, 2008. The Petitioner seeks to have the parcels of land known as **L.R. No. Nyeri/Island Farm 250** and **L.R.No. Nyeri/Island Farm 251** to be wholly transmitted to him. Peter Karuiru Kaburi, hereinafter referred to as the Protestor, filed various affidavits of Protest to oppose the mode of distribution. The Protestor averred that being the deceased's grandson, he was entitled to share the aforesaid parcels of land in equal measure with the Petitioner. The Petitioner filed the affidavit of Rachael Gathoni Gichingi and that John Gakuu Githinji to lend support to the summons for confirmation. It is said that the Petitioner purchased the aforesaid parcels of land by settling the loans due to the settlement Fund Trustees using his mother's name hence he is entitled to inherit the lands. It is said the deceased had expressly told the family that the parcels of land should be inherited by the Petitioner. The Protestor rejected the averments made by the Petitioner and his witnesses. He claimed the parcel of land belonged to his grandmother(*deceased*). He argued that it would have been easier for the deceased to transfer the land to the Petitioner during her life time if indeed those parcels were purchased by him.

I have considered the rival averments plus the submissions. There is dispute that the Petitioner resides on the parcels of land in dispute. The Petitioner is an uncle of the Protestor. The affidavit evidence show that the Petitioner and the Protestor's father i.e. Francis Kaburi Karuiru were involved in **Nyeri S.R.M.C.C. No. 110 of 1988** in which the late Francis Kaburi Karuiru claimed half of the aforesaid parcels of land. Unfortunately, Francis died before the suit was heard and determined. He was however substituted by his son, the Protestor herein. The suit was later transferred to the Land Disputes Tribunal which heard and dismissed it. I have looked at the decision of the Tribunal and it is clear that the Tribunal came to the conclusion that the Protestor's deceased father was not entitled to inherit the land because unlike the Petitioner herein, he did not participate in purchasing the land neither did he develop nor reside on the land. The Protestor filed an appeal to the Provincial Appeals Committee but the appeal was later dismissed. After a careful examination of the material placed before this court I am convinced the deceased made her wishes known to the family during her life time that the parcels of land in question should be inherited by the Petitioner. This view is buttressed by the fact that the Petitioner was allowed to occupy and extensively develop the land to the exclusion of others. For the above reason, the Protestor's father could not be buried on the land in question. I am also satisfied that the Petitioner participated in the acquisition of the land using the deceased's name. In the end, I see no merit in the Protest. The Protest is dismissed and the grant is ordered confirmed as prayed in the summons for confirmation of the grant dated 28th November, 2008. Each party to bear his own costs.

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

**J.K. SERGON**

**JUDGE**

In open court in the presence of Ombongi holding brief for

Gori for Applicant and

Kingori holding brief for Miss Nderitu for Respondent