



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NYERI**  
**SUCCESSION CAUSE NO. 195 OF 1997**

**IN THE MATTER OF THE ESTATE OF KABECHA S/O MUNYONYO-(DECEASED)**

**JOSEPH MUTHARA MWANGI.....PETITIONER**

**VERSUS**

**IRUNGU KARUKU .....PROTESTOR**

**JUDGMENT**

A grant of letters of administration intestate in respect of the Estate of **Kabecha Munyonyo**, deceased was given to **Irungu Karuku** and **Joseph Muthara Mwangi** on 9th October, 2008. Joseph Muthara Mwangi hereinafter referred to as the Petitioner through the firm of Wambugu Mureithi & Co. Advocates took out the summons dated 18th March, 2009 to have the grant confirmed. In the schedule of distribution the Petitioner proposed for the Estate to be distributed as follows:-

1. **Joseph Muthara Mwangi**
2. **David Muthara Maina(deceased)** to be Equally replaced by Lydia Wathuna Maina
3. **Irungu Karuku**

Irungu Karuku, hereinafter referred to as the Protestor through the firm of J. Macharia & Co. Advocates filed two affidavit of Protest to oppose the Petitioner's mode of distribution. The Protestor further filed an affidavit of Protest sworn by Sammy Maina Muturi, Joseph Kaguo, Ngai Mwati and Mwangi Karu to support his contention. When the cause came up for hearing learned counsels appearing in the matter recorded a consent order to have the dispute determined by affidavit evidence and by written submissions.

I have considered the affidavit evidence plus the written submissions. It is the submissions of the Protestor that the Petitioner is not entitled to inherit the deceased's land because the deceased had bequeath inter vivos to the Protestor and David Muthara Maina his parcel of land known as **L.R.NO. Githi/Igana/85**. The clan elders namely: Joseph Kaguo, Ngai Mwati and Mwangi Karu supported the Protestor's claim and they further argued that they had authorized Sammy Maina Muturi to swear an affidavit on their behalf. The Protestor is said to have put up a permanent house on the land upon being given the land by the deceased. The Protestor further stated that the Petitioner attempted to enter the Estate land but was promptly evicted by the area assistant chief. On the other hand, the Petitioner averred

that being the appointed Attorney of one Mwangi Muthaara, he was entitled to inherit the Estate land. He claimed that in 1997, the elders met and agreed to have the land shared equally between the Petitioner, the Protestor and one David Muthaara.

After a careful consideration of the rival averments and submissions, I have come to the conclusion that the evidence clearly point that the deceased bequeath his entire land to the Protester during his lifetime. I find the affidavit evidence filed by the Protestor to be credible. I do not believe the affidavit evidence tendered by the petitioner. Consequently, I decline to confirm the grant as proposed by Joseph Muthara Mwangi (Petitioner) but instead order that the grant be confirmed in terms of the schedule of distribution by Irungu Karuku (Protester). 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. Ndirangu holding brief**

**for Macharia for Petitioner**

**N/A Wambugu Muriithi**