



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NYERI

SUCCESSION CAUSE NO. 278 OF 2002

**IN THE MATTER OF ESTATE OF KARIUKI MAINA alias KARIUKI S/O MAINA -
(DECEASED)**

NGACHA GITHIRAPETITIONER

VERSUS

WAMUYU GITHIRA MAINA.....PROTESTOR

JUDGMENT

The substantive matter in this dispute is the summons for confirmation of grant dated 29.11.2011 in which **Ngacha Githira** (*Petitioner*) seeks to have the grant of letters of administration issued to him on 21.12.2013 in respect of the Estate of **Kariuki Maina alias Kariuki s/o Maina**, deceased, confirmed. The Petitioner proposed to have the Estate distributed as follows:

LR.NO. Githi/muthambi/375

1. **Wanjugu Githira** - 5.35 acres
2. **Wamuyu Githira Maina** - 5.35 acres

Wamuyu Githira Maina (Protestor), opposed the summons by filling an affidavit of protest. He claimed that the Petitioner failed to name all those people who survived the deceased. He stated that the shares and beneficiaries have not been properly ascertained. The Protestor further stated that the deceased had devolved his property inter vivos as follows:

- a. **Wanjugu Githira** - 1.6 acres
- b. **Wamuyu Githira** - 1.6 acres
- c. **Mwangi Githira (dcd)** - 1.5 acres
- d. **Ngacha Githira** - 1.5 acres
- e. **Johnson Maina Githira** - 1.5 acres
- f. **William Kamau Githira** - 1.5 acres
- g. **Francis Irungu Githira** - 1.5 acres

It is said that the beneficiaries have occupied their respective portions as shown by the deceased. The Petitioner did not deny the allegation that the deceased had expressed and implemented his wishes inter vivos. He merely averred that the Estate should be distributed according to the houses.

There is no dispute that the deceased had two wives. The law is clear on how such an Estate should be distributed in the absence of the deceased's wishes. However in the cause before this court, it is apparent that the deceased had shared his land inter vivos as shown in the affidavit of Protest hence ousting the application of **Section 40** of the **Law of Succession Act**. I am convinced by the averments of Wamuyu Githira Maina contained in her affidavit of Protest she swore on 13th December, 2011. Consequently, I find the Protest to be well founded. The grant be confirmed in terms of the schedule of distribution given in the affidavit of Protest of Wamuyu Githira Maina. Each party to meet his or her own costs.

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

J.K. SERGON

JUDGE

In the presence of Muthoni for Petitioner

N/A Muhoho for Protestor