

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYERI

SUCCESSION CAUSE NO. 185 OF 2006

IN THE MATTER OF THE ESTATE OF GITHAIGA KOIGI - (DECEASED)

WANGECHI MWAI.....PETITIONER

VERSUS

MARY WAGAKI GITHAIGA PROTESTOR

JUDGMENT

In the summons for confirmation of grant dated 21st June, 2008, Wangechi Mwai, hereinafter referred to as the Petitioner proposed to have the deceased's only asset i.e **L.R.No. Othaya/Kihugiru/1322** to be subdivided into equal portions and distributed as follows:

1. **Wangechi Mwai** - 0.575 Ha
2. **Mary Wagaki Githaiga** - 0.575 Ha

Apparently Wangechi Mwai and Mary Wagaki Githaiga are the deceased's widows. Mary Wagaki Githaiga, filed an affidavit of Protest to oppose the mode of distribution. She claimed that the deceased had put up several rental residential units on one side of the land. She asked this court to order that the rentals be shared out in equal measure and be made distinct from **L.R. No. Othaya/Kihugiru/1322**. She urged this court not to confirm the grant until the dispute is sorted out amicably. The Protestor further argued that the land should be surveyed and divided while taking into account how the land was developed. The dispute was directed to be disposed of by reception of oral evidence.

At the hearing, the Petitioner testified and also summoned the evidence of one witness while the Protestor testified without summoning any independent witness. I have considered the evidence tendered by both sides plus the submissions. The parties are in agreement that the Estate should be distributed equally. It is also not in dispute that the Protestor has tea bushes on one side of the land and the petitioner has coffee trees on the other side. The issue in dispute is the eight (8) rental units. The Petitioner claims the rentals were left for her because she does not have any other monthly income. The Protestor on the other hand is of the view that the deceased did not give out the rentals to the Petitioner. The Protestor claimed she has been utilizing four of the rentals. There was evidence showing that the deceased held a clan meeting prior to his death where upon he made his wishes known that the rentals be left to the Petitioner. The Protestor proposed to have the portion housing the rentals to be surveyed and its acreage ascertained and thereafter shared equally between the houses. The Protestor further proposed that the remaining part of the land comprising of **L.R. No.Othaya/Kihugiru/1322** should be shared with the portion with her tea being reserved for her while the portion with coffee going to the Petitioner. After anxiously considering the competing interests, I am convinced that the deceased made his wishes known to his cousin and other close clan members. I am also convinced that it was the deceased's wish that the rentals go to the Petitioner's house. I am further convinced that the deceased bequeath his tea to the Protestor which usually provide monthly income from tea leaves deliveries just like the rental income from the buildings. Having come to the conclusion that the deceased had made his wishes known prior to his death, I do not wish to disturb them. Consequently, I find the Protest to be without merit. It is dismissed. For the avoidance of doubt, the grant be confirmed with an order that **L.R.No.Othaya/Kihugiru/1322** be subdivided into two equal portions with Mary Wagaki Githaiga (*Protestor*) shifting to her portion with tea bushes and Wangechi Mwai (*Petitioner*) remaining on the portion she is currently occupying with the rental units going to her house. Each party to meet her own costs.

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

J.K. SERGON

JUDGE

In open court in the presence of Miss Kahinga and Mr. Kingori holding brief for Karweru for Petitioner