



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NYERI**  
**SUCCESSION CAUSE NO.227 OF 2000**  
**IN THE MATTER OF THE ESTATE OF**  
**KIMINI s/o MURITHII – DECEASED**

**JANE THANJI WACHIRA**

**HENRY WAWERU WACHIRA .....**  
**PETITIONERS**

**versus**

**NELSON GACHARI KIMINI.....**  
**.....PROTESTOR**

**R U L I N G**

A grant of Letters of Administration Intestate in respect of the estate of Kimini son of Muriithi, deceased was made to **Jane Thanji Wachira** the Petitioner herein on 11<sup>th</sup> June, 2008. The Petitioner and one **Henry Waweru Wachira** have now taken out the Summons for Confirmation of Grant dated 3<sup>rd</sup> June, 2009 to have the aforesaid grant confirmed. **Nelson Gachari Kimini**, the Protestor herein, filed two affidavits of protest to oppose the summons. The Petitioner filed a further affidavit and another affidavit of Richard Wang’ombe Ndirangu to answer the affidavit of protest. The Protestor also filed the affidavit of Godfrey Kamau Kimini to support his protest. When the dispute came up for hearing before this Court, parties recorded a Consent Order to have the same disposed of by affidavit evidence and by written submissions.

I have considered the facts deponed in the affidavits filed for and in protest. I have further looked at the written submissions. There is no doubt that the Petitioner herein has identified **L.R. No.Aguthi/Gaki/653** as the only asset which is available for distribution. The Petitioner has proposed for the aforesaid parcel to be solely transmitted to her. Nelson Gachari Kimini, the Protestor, averred that the deceased was married to three wives namely:

- ***Waihuini Kimini (now deceased).***
- ***Njunga Kimini (now deceased).***
- ***Mary Wanjiru Kimini (now deceased).***

He stated that he is the son of Mary Wanjiru Kimini, the deceased’s third wife. The Protestor proposed the aforesaid parcel of land to be shared equally between him and the Petitioner. The Protestor further

averred that they (i.e. Protestor and Petitioner) occupy the land in question. In a further affidavit of protest, the Protestor accused the Petitioner of deponing in paragraph 1 of her affidavit that the deceased was survived by **Jane Thanji Wachira, Henry Waweru Wachira, Priscilla Huini Mwaura, Anne Mbithe Wachira** and **Ambrose Gichohi Wachira** as children of the deceased yet she knew the aforementioned were the deceased grandchildren. On this account he proposed for the estate to be given to him to inherit on behalf of his mother's house and Jane Thanji on behalf of her father's house. In her further affidavit, the Petitioner concurred with the Protestor's averments that the deceased had married three wives. The Petitioner indicated that she is in these proceedings as the administrator having substituted her father who passed away as the administrator of the deceased's estate. The Petitioner pointed out that the deceased died intestate leaving behind two parcels of land namely:

**(i) L.R. No. Aguthi/Gaki/653 and**

**L.R. No. Aguthi/Gaki/648.**

The parcel of land known as **L.R. No. Aguthi/Gaki/653** was registered in the deceased's name while **L.R. No. Aguthi/Gaki/648** was registered in the name of Mary Wanjiru Kimini (the Protestor's mother). The Petitioner submitted proceedings of a panel of elders under the chairmanship of the D.O. Tetu, that **L.R. Aguthi/Gaki/648** was inherited by Mary Wanjiru Kimini from the deceased. The Petitioner stated that, the Protestor and his siblings should therefore inherit the aforesaid land and not **L.R. No. Aguthi/Gaki/653**. The Petitioner submitted that the deceased had expressed his wishes that his two wives namely: Waihuini Kimini and Njunga Kimini should share **L.R. No. Aguthi/Gaki/653**. The Petitioner got the support of Richard Wang'ombe Ndirangu and Godfrey Kamau Kimini. The duo were in agreement that the deceased had expressed his wish that **L.R. No. Aguthi/Gaki/653** be inherited by the houses of Waihuini and Njunga since the house of Mary had been sufficiently provided for through **L.R. No. Aguthi/Gaki/648**. I have looked at the copies of the proceedings annexed to the further affidavit of the Petitioner and it is apparent that there was a finding that the Protestor's mother had been given by the deceased **L.R. No. Aguthi/Gaki/648**. That is the portion her remains were interred. It would appear the deceased intended to have the house of Mary Wanjiru Kimini to inherit the aforesaid parcel and for the other two houses to inherit **L.R. No. Aguthi/Gaki/653**.

In the final analysis and for the above reasons, I find the protest to be without merit, it is dismissed. Since the disputes involves members of the same family I direct that each one of them meet his or her own costs. The grant is confirmed in terms of the Summons for Confirmation of Grant dated 3<sup>rd</sup> June, 2009.

**Dated and delivered this 27<sup>th</sup> day of April 2012.**

.....

**J. K. SERGON**

**JUDGE**

In open court in the presence of Mr. Ndirangu for the Protestor and K. Wachira for the Petitioner.