



**REPUBLIC OF KENYA**

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

**SUCCESSION CAUSE NO.931 OF 2009**

**IN THE MATTER OF THE ESTATE OF CHEGE NGATA – DECEASED**

**A N D**

**JONATHAN KIIRU CHEGE.....**

**.....PETITIONER**

**versus**

**RICHARD NJUGUNA MACHARIA.....1<sup>ST</sup>**

**PROTESTOR**

**JOSEPH NDERU**

**CHEGE.....2<sup>ND</sup> PROTESTOR**

**R U L I N G**

A grant of Letters of Administration Intestate in respect of the Estate of Chege Ngata, deceased was given to **Jonathan Kiiru Chege** hereinafter referred to as the Petitioner on 2<sup>nd</sup> June, 2010. The Petitioner thereafter filed the Summons for Confirmation of Grant dated 12<sup>th</sup> January 2011, whereof he sought for the grant to be confirmed. The Petitioner swore an affidavit in support of the summons. **Richard Njuguna Macharia** and **Joseph Nderu Chege**, hereinafter referred to as the 1<sup>st</sup> and 2<sup>nd</sup> Protestors each filed an affidavit of protest to oppose the application for confirmation of the grant. Learned counsels appearing in the matter recorded a Consent Order to have the dispute determined by affidavit evidence and by written submissions.

This Court has carefully considered the affidavit evidence together with the grounds set out on the face of the summons plus the written submissions. The Petitioner has identified the only asset of the estate as **Loc.9/Kanyenyaini/285** and the following as having survived the deceased:

- ***Joseph Nderu Chege.***
- ***Jonathan Kiiru Chege.***
- ***Mbaki Chege.***
- ***Patrick Kihang’a Chege.***
- ***Virginia Wairimu Macharia.***

- ***Kelen Muthoni Wageche.***
- ***Stanley Macharia Nderu.***

In his application, the Petitioner proposed to have the aforesaid asset to be shared in by the following beneficiaries in the following manner:

- ***Jonathan Kiiru Chege*** – ***0.8 acres.***
- ***Duncan Mbaki Chege*** - ***0.8 acres.***
- ***Kelen Muthoni Wageche*** - ***0.8 acres.***
- ***Patrick Kihang'a Chege*** - ***0.8 acres.***
- ***Joseph Nderu Chege*** - ***0.8 acres.***

Richard Njuguna Macharia, the 1<sup>st</sup> Protestor opposed the Petitioner's proposal claiming that a member of his late father's family was not included in the sharing of the estate. He named the late Stanley Macharia Chege as his father who was entitled to share his father's estate (i.e. the estate of Chege Ngata, deceased). The 1<sup>st</sup> Protestor was of the view that the estate of his father was entitled to 0.5 acres to be excised from the land in question. The 1<sup>st</sup> Protestor proposed that ***L.R. No. Loc.9/Kanyenyaini/286*** be distributed as follows:

- ***Jonathan Kiiru Chege*** – ***0.5 acres.***
- ***Duncan Mbaki Chege*** - ***0.5 acres.***
- ***Kelen Muthoni Wageche*** - ***0.5 acres.***
- ***Virginia Wairimu Macharia*** - ***0.5 acres.***
- ***Patrick Kinang'a Chege*** - ***1.0 acre.***
- ***Joseph Nderu Chege*** - ***1.0 acre.***

In his affidavit of Protest, Joseph Nderu Chege, the 2<sup>nd</sup> Protestor herein, claimed he was entitled to inherit a portion of the deceased's land in his capacity as a son and beneficiary. He adopted the mode of distribution proposed by the 1<sup>st</sup> Protestor. In response to the aforesaid averments, the Petitioner filed a further affidavit to controvert the same. The Petitioner denied the allegation that the family of the late Stanley Macharia Chege was not consulted before the filing of the Cause. He claimed that he prompted to apply for Letters of Administration upon being cited by the 2<sup>nd</sup> Protestor who jointly filed, citation proceedings together with Virginia Wairimu Chege. The Petitioner alleged that the family met on 23<sup>rd</sup> November 1988, in which it was resolved that Stanley Macharia Chege, deceased and Simon Nderu Chege had already received one acre each from the deceased hence they are not entitled to inherit anything from the remainder of the land. The Petitioner identified the land given to the late Stanley Macharia Chege to form part of ***L.R. No. Loc.9/Kanyenya-ini/366*** – which was later transmitted to Virginia Wairimu Macharia. The Petitioner further challenged the 2<sup>nd</sup> Protestor to show the reasons why he wants to get more land than his siblings. The averments contained in the further affidavit of Jonathan Kiiru Chege have not been controverted. Annexed to the aforesaid affidavit is a copy of the minutes of a family meeting held on 23<sup>rd</sup> October, 1988 written in Kikuyu language with an English translation. It is clear from the aforesaid minutes that Saimon Nderu Chege and Stanley Macharia were barred from further claiming for a share from the deceased's estate because they had sufficiently been provided for since they each had received 1 acre. I am convinced that the Petitioner has shown that the 1<sup>st</sup> Protestor's

father i.e. the late Stanley Macharia Chege was sufficiently provided for hence his estate is not entitled to claim from the estate of the deceased herein. I am convinced that Joseph Nderu Chege, the 2<sup>nd</sup> Protestor has failed to justify why he thinks he should be awarded more land than his siblings. I find no merit in the protest. It is dismissed. The grant is ordered confirmed as prayed in the Summons for Confirmation of Grant dated 12<sup>th</sup> January, 2011. Each party to meet his or her own costs.

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

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**J. K. SERGON**

**JUDGE**

Waweru Macharia for Petitioner. No appearance Mwaniki for the Protestor and Njuguna Macharia in person.