



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NYERI
SUCCESSION CAUSE NO.495 OF 2008
IN THE MATTER OF THE ESTATE OF
MUHIU GITHINJI alias GITHINJI MUHIU – DECEASED

A N D

MARY WAMAITHA MUHIU.....PETITIONER

versus

WILLIAM WANJOHI MUHIU.....PROTESTOR

R U L I N G

This decision is the outcome of the Summons for Confirmation of Grant dated 12th June, 2009 taken out by **Mary Wamaitha Muhiu**, the Petitioner herein and the subsequent protest filed by **William Wanjohi Muhiu**, the Protestor herein. The protagonists in this Cause recorded a Consent Order to have the dispute determined by affidavit evidence and by written submissions.

I have considered the written submissions plus the material placed before me. On the 1st day of December 2008, the Petitioner was granted Letters of Administration Intestate in respect of the Estate of Muhiu Githinji alias Githinji Muhiu, deceased. She is now before this Court seeking for the aforesaid grant to be confirmed. She has proposed to have the following assets of the estate to be shared as follows:

- (i) **L.R. No. Nyandarua/Leshau Block 4/(Kieni East 117) to go to Francis Mwangi Muhiu.**
- (ii) **Laikipia/Salama Muruku Block 1 (Kieni East 2711) to be shared equally between Richard Muchoki Muhiu and Joseph Maina Muhiu.**
- (iii) **L.R. No. Konyu/Baricho/2875 half share to go to Joseph Maina Muhiu.**
- (iv) **100 shares with K.C.B. to go to Mary Wamaitha Mahiu.**
- (v) **1,000 shares with Kenya Airways – to go**

Mary Wamaitha Mahiu.

The Protestor filed an affidavit of Protest claiming he was excluded from sharing the deceased's estate yet he was a son to the deceased. He proposed the estate to be distributed equally between the children. In response to the aforesaid challenge, the Petitioner stated that the Protestor cannot claim from the deceased's estate since he has sufficiently been provided for in that he is entitled to solely inherit **L.R.**

No. Nyandarua/Leshau Block 4 (Kieni East/41 which is registered in her name in trust for the Protestor. The Protestor did not file any affidavit to controvert the averments contained in the further affidavit of the Petitioner. There is a trust reference to the averments of Petitioner's further affidavit by the Protestor through his submissions. It is curious to note that the Protestor states as follows:

“It has been alleged in the Petitioner’s submission that the Petitioner is registered as Proprietor of a certain L.R. Nyandarua/Leshau/Block 4 (Kieni East)/41 in trust of the family. However, this allegation is neither here nor there as the subject of the proceedings herein is the properties of the deceased, whatever the shares of each member of the family in that land is are matters of a different forum.”

The Protestor does not deny the allegation that the deceased had expressed his wish to have him inherit 10 acres to be excised from **Nyandarua/Leshau Block 4 (Kieni East)/41** and to leave the rest to be shared by his siblings. I have critically examined the share of land given to each. It is obvious that each of them is receiving land measuring approximately 10 acres. I am convinced the Petitioner deponed the truth and has shared the estate in accordance with the deceased's wishes. The Protestor, in my view was not candid. He was evasive to say the least. I am satisfied he is aware that he is entitled to get 10 acres to be excised from **L.R. No. Nyandarua/Leshau Block 4 (Kieni East)/141** and that is why he did not file an affidavit to contradict his mother, the Petitioner. He was sufficiently catered for hence equity cannot allow him to benefit twice to the utter detriment of his siblings. He will have unjustly enriched himself. For the above reasons, I see no merit in the protest. The protest is dismissed. The grant be confirmed as prayed by the Petitioner. I direct that each party meets his or her own costs since they are members of the same family.

Dated and delivered this 27TH day of April 2012.

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J. K. SERGON

JUDGE

In open court in the presence of Miss Amboko holding brief Wamahiu for the Protestor no appearance for Kamwenji for the Petitioner.