



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NYERI**  
**SUCCESSION CAUSE 769 OF 2009**

**In the matter of the estate of the late Mwangi Njuguna (deceased)**

**And**

**TERESIA NJERI MWANGI.....PETITIONER**

**GRACE NJOKI WANDERI.....OBJECTOR**

**RULING**

In the Summons dated 27<sup>th</sup> January 2009, Teresia Njeri Mwangi, hereinafter referred to as the Petitioner, applied for the Grant of Letters of Administration intestate in respect of the Estate of Mwangi Njuguna, deceased, given to her on 17<sup>th</sup> June 2008 to be confirmed. She filed an affidavit she swore in support of the Summons. Grace Njoki Wanderi opposed the Summons for Confirmation of Grant by filing an affidavit of Protest. Learned Counsels appearing in this matter recorded a consent order to have the dispute disposed of by affidavit evidence and by written submissions.

I have considered the averments contained in affidavits filed in support and against the Summons plus the rival written submissions. In the Summons for Confirmation of Grant, the Petitioner identified the following properties to be assets of the Estate which were available for distribution:

- i) LOC. 12/BLOCK 1/471
- ii) LOC. 12/BLOCK 1/465
- iii) Shares with Endana Farmers Co. Ltd.

The petitioner proposed for the aforesaid assets to be transmitted to her. The Protestor on her part complained that she was excluded from the sharing of Estate yet she is a beneficiary. She claimed that she was the widow of the late Josphat Wanderi Njuguna who was a brother of Mwangi Njuguna, deceased. In essence the Protestor claims he is a sister in-law to the deceased. The Protestor alleged that she has been residing together with her here children in LOC.12/SUB-LOC.1/471, a parcel of land measuring approximately 2 acres while the Petitioner resides in LOC.12/SUB-LOC.1/465, a parcel of land measuring approximately 3.2 acres. She proposed for the Estate to be distributed as follows:

- LOC.12/SUB-LOC.1/471 – Grace Njoki Wanderi.
- LOC.12/SUB-LOC.1/465 – Teresia Njeri Mwangi.
- Shares with Endana Farmers Co. Ltd. - Teresia Njeri Mwangi

It is the Protestor's submission that the deceased was registered as the Proprietor of LOC.12/SUB-LOC.1/471 in trust for Josphat Wanderi Njuguna, her deceased husband. The Petitioner denied the Protestor's claim. She alleged that the late Josphat Wanderi died without a wife or children hence the Protestor is a stranger to the Estate.

After critically examining the Protestor's claim, it is clear in my mind that her claim is based on trust. Such a claim can only be established in the manner specified under rule 41(3) of the Probate and Administration Rules. Consequently, I hereby postpone the confirmation of grant for 90 days and direct the Protestor to take out proceedings to determine the claim based on trust under Order 37 rule 1 of the Civil Procedure Rules within the aforesaid period of 90 days. Costs to abide the outcome of the summons for Confirmation of Grant.

Dated and delivered at Nyeri this 2<sup>nd</sup> day of August, 2012.

**J. K. SERGON**  
**JUDGE**