



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NYERI

SUCCESSION CAUSE NO. 274 OF 2010

**IN THE MATTER OF THE ESTATE OF JONAH KAGECHU MUGEKENYI ALIAS JONAH
KAGECHU – DECEASED**

SAMUEL KAGECHU MWANGI.....PETITIONER

VERSUS

EDWARD KIMANI GACHANGO & OTHERS.....PROTESTORS

JUDGMENT

A grant of Letters of Administration intestate in respect of the Estate of Jonah Kagechu, deceased, was made to Samuel Kagechu Mwangi, hereinafter referred to as the Applicant, on 24th September 2004 by the Principal Magistrate's Court, Muranga. He has now taken out the Summons for Confirmation of Grant dated 29th March 2005 in which he prayed for the grant to be confirmed. Edward Kimani Gachango, hereinafter referred to as the Protestor, opposed the summons by filing an affidavit of Protest. When the dispute came up for hearing, the subordinate court made an order transferring the Succession Cause to this Court for hearing and determination on the ground that the Court had no pecuniary interest to hear and determine the cause. Directions were given directing the matter to be determined by oral evidence and by submissions.

I have considered the evidence and the submissions. The Applicant has listed the following persons as those who survived the deceased:

1. Samuel Kagechu Mwangi – grandson.
2. Muiethe Arabia Maiba – Stepson.
3. James Kariuki – stepson.
4. Edward Kimani – Stepson.

The Applicant also identified the following properties as the assets of the Estate:

- (i) **LOC. 10/KAHUTI/950.**

(ii) **LOC. 10/GATHINJA/229.**

He proposed for the aforesaid properties to be distributed as follows:

(i) **LOC. 10/KAHUTI/950.**

Samuel Kagechu Mwangi - 1.5 acres

Edward Kimani - 1.5 acres

(iii) **LOC. 10/GATHINJA/229**

James Kariuki - 1.45 acres

Muithe Arabia Maiba - 1.45 acres.

Edward Kimani Gachango opposed the application for confirmation of grant for various reasons. He was of the view that the deceased was survived by himself, being a step son and two sons namely James Kariuki Gerishon and Kenneth Macharia. He claimed that Muithe Arabia Maiba was not related to the deceased hence he was not entitled to share the deceased's Estate. The Protestor claimed that the deceased gave Muithe Arabia Maiba, a small portion to occupy in a temporary basis within **L.R. NO. LOC. 10 GATHINJA/229**. The Protestor further alleged that Samuel Kagechu Mwangi, being a grandson was not entitled to inherit the deceased's Estate. The Protestor claimed that the deceased gave him 1.3 acres and that he bought 1.7 acres which was consolidated to form **LOC. 10/KAHUTI/950** and registered in the deceased's name. He proposed to solely inherit **LOC. 10/KAHUTI/950**. He proposed that **LOC. 10/GATHINJA/229** be shared in equal measure between James Kariuki Gerishon and Keneth Macharia.

At the close of evidence, learned counsel appearing in this cause, were permitted to file written submissions. There is no dispute that the two pieces of land are registered in the name of the deceased. There is no doubt aslo that Muithe Arabia Maiba is occupying a portion of **LOC. 10/GATHINJA/229**. The Protestor has claimed that he owns a portion measuring 1.7 acres comprising in **LOC. 10/KAHUTI/950**. The Protestor is indirectly saying that the aforesaid portion of the land was registered in the name of the deceased in trust for him. The Protestor claims he has put up a permanent building which he used to claim owner occupier house allowance. There is also evidence that Muithe Arabia Maiba occupies nearly half of **LOC. 10/GATHINJA/229**. It is not difficult to decide this dispute but there is a complication which has arisen in view of the Protestor's claim. Basically the Protestor is alleging that a portion measuring 1.7 acres comprised in **LOC. 10/KAHUTI/950** was his land which he purchased but was registered in the name of the deceased in trust for him. Such an issue can only be determined in the manner provided for under rule 41 of the Probate and Administration Rules. A fair order is to stay further proceedings in this cause and direct the Protestor to take out the necessary proceedings to establish his claim within 90 days from the date hereof. Costs of these proceedings to abide the outcome of this cause.

Dated and delivered at Nyeri this 25th day of February 2011.

J. K. SERGON
JUDGE

In open court in the presence of Mr. Ng'ang'a holding brief Kirubi for Petitioner and Mwangi holding Gacheru for objector.