



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NYERI**

**SUCCESSION CAUSE NO. 105 OF 2008**

**IN THE MATTER OF THE ESTATE OF KANINI IRUNGU – DECEASED**

**JULIUS NDIRANGU KANYI.....PETITIONER**

**VERSUS**

**WILSON KARIUKI KANYI .....OBJECTOR**

**JUDGMENT**

This judgment is the result of the Summons for Confirmation of grant dated 29<sup>th</sup> April 2008 and the affidavit of protest sworn on 29<sup>th</sup> May 2008. On 13<sup>th</sup> June 2008, this court directed that the dispute be determined by the reception of oral evidence.

When the dispute came up for hearing, **Wilson Kanyi Kariuki**, hereinafter referred to as the ‘protestor’, testified and presented the evidence of one witness in support of the protest. The Protestor (P.W.1) told this court that he was the son of Kanini Irungu, deceased, while Julius Ndirangu Kanyi, the Petitioner herein, was a grandson of the deceased. P.W.1 pointed out that the deceased owned a parcel of land at Thuti sub-location now Karima location. It is alleged that the deceased caused the aforesaid parcel of land to be registered in the names of Kariuki Irungu also known as Irungu Kanini and Njutha Kanini. P.W. 1 further stated that Kanini Kariuki became registered as the proprietor of **L.R. NO. OTHAYA/THUTI/36** while Njutha Kanini got registered as the owner of **L.R. No. OATHAYA/THUTI/75** whereas **L.R. No. OTHAYA/THUTHI/36** was to e registered in P.W.1’s name. P.W. 1 further alleged that after the emergency period the family of Kanini Irungu left the emergency villages and went to occupy **L.R. NO. OTHAYA/THUTI/51** with no objection from Kariuki Kanini. According to the Protestor (P.W.1), the deceased decided to register his parcel of land in the names of his sons i.e. (Kariuki Kanini and Njutha Kanini) and remained with **L.R. NO. OTHAYA/THUTI/36** for the benefit of his last born son(Wilson Kanyi Kariuki) who was still young. P.W. 1 also alleged that if Wilson Kanyi Kariuki, had a family, the land i.e. **L.R. OTHAYA/THUTI/36** could have been registered in his name. The protestor was of the view that the deceased’s daughters were not given land by the deceased during land consolidation because they were all married. He was of the view that daughters who broke up their marriages and came back home after the land had been transferred like Wangui Kanini should be catered for by the deceased’s three (3) sons. P.W.1 further stated that Njutha Kanini stayed for a while on the land registered in the name of Irungu Kanini but thereafter moved to occupy the one registered in his name. The protestor was later registered as the proprietor of **L.R. OTHAYA/THUTI/36**. The Protestor is of the view that each of the deceased’s sons should give one acre each to Wangui Kanini. P.W. 1 said he was ready and willing to give Wangui Kanini, one acre and that it is upon her to claim one acre each from the other brothers. P.W.1 was of the view that the Petitioner herein being a grandson cannot directly claim for a share from the Estate of his grandfather since he can do so through his mother. The Protestor urged this court to dismiss the Summons for Confirmation of Grant because it is not supported by the wishes and conduct of the deceased.

The Petitioner on his part is of the view that the Protest has no merit. His case is supported by his evidence and those of two other witnesses. The Petitioner (D.W.1) was of the view that **L.R. NO.**

**OTHAYA/THUTI/36** should be shared equally between him and the Protestor i.e. each getting 3.45 acres. D.W. 1 told this court that the deceased during his lifetime had given the aforesaid land to both the Protestor and the Petitioner's mother, Jane Wangui Kanini to share in equal measure. D.W.1 conceded that the other sons of the deceased i.e. Kariuki Kanini and Njutha Kanini were given their share during the lifetime of the deceased. D.W. 1 further indicated that the deceased had put a boundary separating the land of the Protestor and that of his mother. This piece of evidence was corroborated by the evidence of Stephen Ndirangu Karugu (D.W.3).

I have considered the evidence tendered by both sides in support of their positions in this dispute. It is not in dispute that the Petitioner herein is pursuing the cause on behalf of his mother, Jane Wangui Kanini who is said to be deaf and dumb. It is also not in dispute that **L.R. NO. OTHAYA/THUTI/36** is the only asset of the deceased's Estate which is available for distribution. There is also no dispute that the deceased had three sons i.e. Irungu Kanini, Njutha Kanini and Wilson Kanyi Kariuki. The first two sons i.e. Irungu Kanini and Njutha Kanini were given land by the deceased during his lifetime leaving out the Protestor. There is also no dispute that Irungu and Njutha have no interest over **LR. OTHAYA/THUTI/36**. Their decision not to lodge any claim could have been informed by the fact that may be they believed they were sufficiently provided for by the deceased during his lifetime. There is also no evidence that the other deceased's daughters have lodged any claim over the land. Those fighting over the deceased's only asset are Jane Wangui Kanini through her son the Petitioner herein and Wilson Kanyi Kariuki, the Protestor herein. There is no doubt that Jane Wangui Kanini and Wilson Kanyi Kariuki are the children of the deceased. The duo were not provided for during the deceased's lifetime. They were however, shown the portions to occupy and utilize. The evidence presented shows that there were marked boundaries. Under *Section 38* of the Law of Succession Act the land should be shared equally between the children. The law appears to support the Petitioner's proposed mode of distribution. In the end I see no merit in the protest. The same is dismissed. The grant is confirmed as prayed in the Summons for Confirmation of Grant. Since the dispute involves siblings, I direct each to meet his or her own costs.

*Dated and delivered at Nyeri this 20<sup>th</sup> day of May 2011.*

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

In open court in the presence of Maatwa for the Petitioner no appearance of K. Wachira for Protestor.