



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NYERI**  
**SUCCESSION CAUSE NO. 126 OF 2001**  
**IN THE MATTER OF THE ESTATE OF**  
**NUTHU MWANGI alias KINGORI MWANGI .....DECEASED**  
**AND**  
**IRENE WANJIKU MWANGI,.....PETITIONER**  
**VERSUS**  
**DANIEL KINGORI & JOYCE WAITHERERO NUTHU.....PROTESTORS**

**RULING**

A grant of letters of administration in respect of the estate of Kingori Mwangi, deceased was made to Irene Wanjiku Mwangi, the Petitioner herein on 18<sup>th</sup> September 2002. The Petitioner applied for the grant to be confirmed vide the summons for confirmation of grant dated 4<sup>th</sup> February 2009. The summons is supported by the affidavit of the petitioner. Daniel Kingori and Joyce Waitherero Nuthu, being the protestors, each filed an affidavit of protest to oppose the summons. This court directed the dispute to be disposed of by the reception of oral evidence.

I have considered the evidence tendered by both sides and the material placed before me plus the written submissions. The Petitioner gave her evidence and summoned the evidence of three independent witnesses. In sum, the evidence of the petitioner and her witnesses is to the effect that the deceased made it clear that his parcel of land known as L.R. no. Chinga/Kagongo/199 should be divided into three equal portions. It is said that the deceased wishes were actualized on the ground with each beneficiary building on their own portion. The petitioner proposed the land to be shared as follows:

<i>Irene Wanjiku Mwangi</i>	- $\frac{1}{3}$ share
<i>Joyce Waitherero</i>	- $\frac{1}{3}$ share
<i>Rahel Wambui</i>	- $\frac{1}{3}$ share

Rahel Wambui Kingori had on her part proposed that the land be shared in the following manner:

<i>Rahel Wambui</i>	- 5 acres
<i>Joyce Waitherero</i>	- 2.3 acres

***Irene Wanjiku***

***- 1.5 acres.***

Daniel Maina Kingori, on his part proposed that the trio i.e. Rahel Wambui, Joyce Waitherero and Irene Wanjiku be removed from the sharing and their children be allowed to share the land in equal measure. The petitioner is of the view that her proposal is the fairest.

It is now clear that the petitioner herein is the sister to the deceased while the protestor is a son of the deceased. The law of succession Act is categorical on the mode of distribution in respect of interstate estates. The petitioner can only claim as a dependant but not as a direct heir.

Regrettably Rahel Wambui did before these proceedings were completed. The petitioner has made very interesting submissions. She claimed she was the unmarried daughter of Nuthu Mwangi, a brother Kingori Mwangi, deceased. The deceased is said to have been registered as the proprietor of the parcel of land in dispute in trust for himself and the late father of the petitioner. Rahel Wambui Kingori and Joyce Waitherero both claim to be the wives of Kingori Mwangi, deceased. It is said there is a constructive trust in favour of Irene Wanjiku Mwangi who was entitled to get half the share of the land registered in the name of Kingori Mwangi ie. 1/3 of the land.

After anxiously considering the submissions of both sides I have come to the conclusion that the claim by the petitioner is that based on trust. Irene Wanjiku Mwangi, is basically saying that the late Kingori Mwangi, held 1/3 of L.R. no. Chinga/Kagongo/199 in trust for her late father Nuthu Mwangi. Such a claim cannot be established through this cause. A fair order is to direct that the confirmation of grant be postponed for 6 months pending the petitioner taking out the necessary proceedings to establish her claim under rule 41(3) of the Probate & Administration Rules. Each party to meet his or her own costs.

**Dated and delivered this 29<sup>th</sup> day of July 2011.**

**J.K. SERGON**

**JUDGE**

In open court in the presence of G. Mwangi for petitioner and N/A for Ndirangu for objector.

**J.K. SERGON**

**JUDGE**