

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NYERI

SUCCESSION CAUSE NO. 927 OF 2009

IN THE MATTER OF THE ESTATE OF

**WANYAGA KAARADECEASED
AND**

JOSEPH KIUNDU WANYAGAPETITIONER

versus

JOHN GIKARIA WANYAGA

JOHN MWANGI WANYAGA.....PROTESTORS

JUDGMENT

A grant of letters of administration intestate in respect of the estate of Wanyaga Kaara, deceased was made to Joseph Kiundu Wanyaga, hereinafter referred to as the 'Petitioner' on 13th April 2010. The Petitioner has now applied for the grant to be confirmed vide the summons for confirmation of grant dated 17th November 2010. John Gikaria Wanyaga and John Mwangi Wanyaga, hereinafter referred to as the Protestors filed an affidavit of protest they jointly swore to oppose the summons. This court gave directions to have the dispute disposed of by affidavit evidence and by written submissions. In the end, the petitioner was the only party who filed his submissions

I have considered the facts deponed in affidavit filed in support of the summons for confirmation of grant and those deponed in the affidavit of protest. The petitioner identified L.R. no Othaya/Kihugiru/837 to be the only asset of the estate available for distribution between himself, John Gikaria Wanyaga and Peter Gakuo Ndegwa. The Protestors main contention is that the Petitioner did not name John Mwangi Wanyaga as one of the beneficiaries of the land. The petitioner averred that the deceased had given each of his sons intervivos 1.5 acres and was left with L.R. no. Othaya/Kihugiru/837. It is the Petitioner's submission that it was the deceased's wish that the land be shared in equal portions between the three sons named in the affidavit in support of the summons. When John Mwangi Wanyaga appeared before this court he indicated that he has no interest to claim a portion of the aforesaid land. The main reason why the protestors opposed the confirmation of grant is the allegation that the petitioner had excluded John Mwangi Wanyaga from sharing the land. Now that John Mangy Wanyaga has indicated he has no interest to share the land, then the protest must fail. The same is dismissed and the grant is ordered confirmed as prayed in the summons for confirmation of grant dated 17th November 2010. Each party to meet his own costs.

Dated and delivered this 29th day of July 2011.

**J.K. SERGON
JUDGE**

In open court in the absence of parties with notice.