



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NYERI**

**SUCCESSION CAUSE NO. 751 OF 2008**

IN THE MATTER OF THE ESTATE OF JORAM KIHORI HUTCHISON KARURIA ALIAS KIHORI  
S/O KARURIA (DECEASED)

**ISAACK HUNJA KARURIA.....OBJECTOR**

**VERSUS**

**ANN KIRIGO KIHORI alias**

**ANN KIRIGO NDIRANGU.....APPLICANT**

**RULING**

A Grant of Letters of Administration intestate in respect of the Estate of Joram Kihori Hutchison Karuria alias Kihori s/o Karuria, deceased, was given to Ann K. Kihori and Isaack Hunja Karuria on 5<sup>th</sup> May 2009. **Ann K. Kihori**, hereinafter referred to as the Applicant, applied for the grant to be confirmed vide the Summons For Confirmation of Grant dated 13<sup>th</sup> May 2009 in which she proposed to solely inherit the assets of the Estate of the deceased. Isaack Hunja Karuria, hereinafter referred to as the Protestor, filed an affidavit of protest to oppose the Summons for Confirmation of Grant. In the affidavit of Protest, the protestor alleged that the deceased had bequeath his entire Estate to him hence he was of the view that he was entitled to inherit the Estate to the exclusion of the Applicant.

This court directed for the dispute to be disposed of by oral evidence. The Protestor testified and tendered the evidence of one witness. **Isaack Hunja Karuria** (P.W.1) claimed the deceased sold 1.5 acres to be excised form **L.R. NO. KIRIMUKUYU/KIRIA/1192** to one Stephen Wachira Njuho and the deceased bequeath to him the remainder of 1.04 acres in appreciation for taking care of him. P.W. 1 produced a copy of an agreement he executed together with the deceased and Stephen Wachira Njuho. He further produced a copy of the Land Control Board consent the trio obtained from the Mathira Land Control Board as an exhibit in evidence. P.W. 1 further produced copies of the Mutation forms to prove that **L.R. NO. KIRIMUKUYU/KIRIA/1192** was subdivided into two portions namely:

**L.R. NO. KIRIMUKUYU/KIRIA/1251**

**L.R. NO. KIRIMUKUYU/KIRIA/1252**

P.W. 1 claimed the deceased bequeath to him L.R. No. Kirimukuyu/Kiria/1251 whereas L.R. No. Kirimukuyu/Kiria/1252 went to Stephen Wachira. The consent for transfer was not obtained before the deceased's death. P.W. 1 claimed the Applicant had neglected the deceased and that is why he did not provide for her. In short, the Protestor claimed the deceased gave him the land *intervivos*. P.W. 1 admitted in cross-examination that the deceased used to be taken care of by a lady called Mama Peter who had

been hired to do so. The Protestor also claimed the deceased gave him a general power of attorney in 2008 authorizing him to deal with his assets. **Mary Wacheke Hunja** (P.W. 2), the wife of P.W.1, alleged that she heard the deceased tell P.W.1 to continue subdividing his land with a view of selling one portion and inheriting the remainder, on the eve of the day the deceased died. P.W. 2 confirmed that she knew the Applicant had employed one mama Peter to take care of the deceased.

**Ann K. Kihori** (D.W. 1), the applicant, told this court that she was not aware that her late father had bequeath his land to the Protestor. The Applicant produced two letters written by the deceased to show that the Protestor and the deceased did not share a cordial relationship. The Protestor confirmed that those letters were written by the deceased. In one letter, the deceased alleged that the Protestor had threatened to kill him over the land. In the second letter, the deceased complained to the Protestor for claiming that the applicant will not inherit the land. **James Wang'ombe** (D.W. 2) told this Court that he was a clan chairman and that the deceased was very close to him to the extent that he would share with him his family affairs. He said the clan in the year 2003 managed to convince the deceased to subdivide L.R. NO. KIRIMUKUYU/KIRIA/455 in order to give his brother Dan Kihori his portion. D.W. 2 said the deceased told him his land should be inherited by the Applicant. **James Kihori Job** (D.W. 3), stated that he was not aware that the deceased had bequeath his land to the protestor. D.W. 3 said he knew the Protestor had no cordial relationship with the deceased. The Applicant urged this Court to dismiss the Protest. At the close of evidence both the Protestor and the Applicant were invited to make brief oral submissions.

I have considered the evidence and the submissions tendered by both sides. It is not in dispute that the Applicant is the deceased's only child. She therefore ranks on priority to succeed the deceased. The Protestor claimed the deceased had sold 1.5 acres of his land to one Stephen Wachira. That person did not personally attend court to testify. He did not even file any objection to the Summons for Confirmation of Grant. The Protestor has claimed he had been given a power of attorney by the deceased. Unfortunately for the Protestor, he did not produce as an exhibit a copy of the power of attorney. The Protestor further claimed the deceased had bequeath to him a portion measuring 1.04 acre in appreciation of his care. This piece of evidence appears to have been controverted by the evidence tendered by the Applicant. It is obvious from the correspondences produced by the Applicant as exhibits in evidence that the Protestor had no cordial relationship with the deceased. I am convinced the Protestor is not a truthful person. If it is true he was given a power of attorney, then why didn't he produce it in evidence. If it is true the deceased sold a portion of his land to one Stephen Wachira, then why didn't he attend court to claim his share. This court can in the circumstances infer that the alleged sale agreement produced by the Protestor was not a genuine transaction. In the end I have come to the conclusion that there is no cogent evidence to show that the deceased had bequeath a portion of his land to the Protestor. I believe the evidence of the Applicant and her witnesses. Their evidence were consistent and appeared to be telling the truth. For the above reasons, I find no merit in the Protest. The same is ordered dismissed and the grant is ordered confirmed as prayed in the Summons for Confirmation of Grant with costs to the Applicant.

***Dated and delivered at Nyeri this 23<sup>rd</sup> day of September 2011.***

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

In open court in the presence of Miss Mwai for the applicant and the Protestor in person.