



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NYERI**  
**SUCCESSION CAUSE NO. 15 OF 2009**

**IN THE MATTER OF THE ESTATE OF WACHUKA MUCHIRI – DECEASED**

**TIMOTHY KIMITI.....PETITIONER**

**VERSUS**

**MUCHEMI MUCHIRI.....PROTESTORS**  
**KAIRU MUCHIRI**  
**JOSEPH WACHIRA**  
**GERALD MAINA**

**JUDGMENT**

**Timothy Kimiti**, the Petitioner herein, took out the summons for Confirmation of Grant dated 17<sup>th</sup> January 2007 in which he applied for the grant issued to him on 12<sup>th</sup> July 2006 to be confirmed. The Petitioner swore an affidavit in support of the summons. Muchemi Muchiri, Kairu Muchiri Joseph Wachira and Gerald Maina, the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> protestors opposed the Summons by filing the affidavit of Protest of Kairu Muchiri. Learned counsels appearing in this cause recorded a consent order to have the dispute disposed of by affidavit evidence and by written submissions.

I have considered the affidavit evidence and the written submissions. In his schedule of distribution, the Petitioner identified the assets of the Estate of the deceased and proposed the distribution of the same as follows:

(a) **L.R. NO. KONYU/GACHUKU/1201** – Karembu Water Project.

(b) **L.R. NO. KONYU/GACHUKU/1202: -**

- Muchemi Muchiri
- Kairu Muchiri
- Joseph Wachira
- Gerald Maina

The Protestors opposed the Summons claiming that the parcels of land mentioned in the affidavit of

Timothy Kimiti were non-existent. They claimed that the assets of the Estate were:

**L.R. NO. KONYU/GACHUKU/1163 and**

**L.R. NO. KONYU/GACHUKU/1164**

The Protestors were of the view that the Petitioner is not a beneficiary of **L.R. NO.**

**KONYU/GACHUKU/1164**. The Protestors proposed for the asset of the Estate to be share in equal measure between Abraham Kairu Muchiri and Muchemi Muchiri. In a further affidavit, the Protestors stated that they have come to learn that the parcel of land known as **L.R. NO.**

**KONYU/GACHUKU/1164** has been subdivided into two subdivisions i.e. **KONYU/GACHUKU/1201** and **KONYU/GACHUKU/1202**. They still insisted that they are the only ones who should inherit the two parcels in equal portions. They claimed the Petitioner was a stranger to the Estate. I have carefully taken into account the rival affidavit averments. It is not in dispute that **L.R. NO.**

**KONYU/GACHUKU/1164** was closed upon subdivision giving rise to **L.R. NO.**

**KONYU/GACHUKU/1201** and **1202**. It is also not in dispute that the Petitioner is the Chairman of Karembu Water Project which was developed on the parcel of land known as **L.R. NO.**

**KONYU/GACHUKU/296** which was owned by the late Muchiri Chiuma who was succeeded by his wife Wachuka Muchiri vide Karatina R.M. SUCC. Cause No. 52 of 1980. In aforesaid succession cause Karembu Water Project was given 0.7 acres. The aforesaid land i.e. **L.R. NO.**

**KONYU/GACHUKU/296** was subdivided into two subdivision i.e. **L.R. NO.**

**KONYU/GACHUKU/1163** and **1164**. **L.R. NO. KONYU/GACHUKU/1163** was transmitted to Mwangi Muchiri while Wachuka Muchiri now deceased, retained **L.R. NO. KONYU/GACHUKU/1164**. The late Wachuka Muchiri subdivided her parcel into two parcels i.e. **L.R. NO. KONYU/GACHUKU/1201** and **1202**. It is also apparent that **L.R. NO. KONYU/GACHUKU/1201** was reserved for Karembu Water Project. The deceased successfully applied for consent but she did not effect the transfer before her death. I am satisfied that the late Muchiri Chiuma was given **L.R. NO. KONYU/GACHUKU/1159** as an appreciation and or compensation for donating the portion now known as **L.R. NO.**

**KONYU/GACHUKU/1201** to Karembu Water Project. I am also satisfied that **L.R.**

**KONYU/GACHUKU/1164** was subdivided with the consent of Wachuka Muchiri, deceased, to parcel out the portion housing Karembu Water Project.

In the end I see no merit in the Protest. The same is dismissed and the grant is ordered confirmed as prayed in the Summons for Confirmation of Grant dated 17<sup>th</sup> January 2007 on condition that **L.R. NO. KONYU/GACHUKU/1202** should be given to Abraham Kairu Muchiri and Muchemi Muchiri to share in equal measure.

I direct that each party meets his or her own costs.

***Dated and delivered at Nyeri this 18<sup>th</sup> day of November 2011.***

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

In open court in the presence of Mr. Kingori holding brief Kamwenji for Protestors and Kahiga holding brief Maina for Petitioners.