



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NYERI**

**SUCCESSION CAUSE 523 OF 2007**

**ESTATE OF JOYCE WAHITO MUTURI – DECEASED**

**AND**

**MARGARET WANGUI MWANGI .....APPLICANT**

**Versus**

**HIRUM MUTURI NDIRITU.....1<sup>ST</sup> PROTESTOR**

**MATHEW MAINA MWANGI.....2<sup>ND</sup> PROTESTOR**

**ELISHIBA NYAKIRANGI MURUGA...3<sup>RD</sup> PROTESTOR**

**RULING**

Joyce Wahito Muturi, deceased passed away on 21<sup>st</sup> July 2001. Margaret Wangui Mwangi hereinafter referred to as the applicant, was granted letters of administration of her estate on 20<sup>th</sup> May 2008. She has now taken out the summons for confirmation of grant dated 3<sup>rd</sup> December 2008. She filed an affidavit she swore in support of the summons. The aforesaid summons attracted two affidavits of protest. Mathew Maina Mwangi and Zakayo Maina Muturi hereinafter referred to as the protestors each filed an affidavit of protest to oppose the summons for confirmation of grant.

The Background of this cause started when the applicant filed citation proceedings whereupon she cited

**MARY WANGECHI**

JOHN NJOGO NDIRITU

HIRAM MUTURI NDERITU

JOYCE MUTHONI NDIRITU

CHARLES GITONGA NDIRITU

DAVID GITAHU NDIRITU

**ELISHIBA NYAKINGI MURUGA**

ZIPORAH WANJIKU MURUGA

MARY WAMUCHII MURUGA

GRACE WANJUGU MURUGA

ELIJA MURUGA

**MATHEW MAINA MWANGI**

JOHN MUTURI

ANJELA WAIRIMU

HANNA NJERI

PETER WAITHAKA

MARTIN WACHIRA

PENINA WAMBUI

ZIPPORAH WANJIKU

JULIA WANGECI

LUCY WAMUYU

GRACE WANJUGU

MARGARET WANGUI MWANGI

All of P.O. Box 920 OTHAYA

as the persons who survived the deceased. The aforesaid persons entered appearance through the firm of Andrew Kariuki (A.K.) & co. Advocate. The citees did not indicate whether or not they were willing to accept or refuse letters of administration. This delay prompted the applicant to apply to be given letters of administration intestate of the estate of the deceased. I have already stated that she was given the grant on 20<sup>th</sup> May 2008. She has now applied for the grant to be confirmed. She had initially listed herself as the only person surviving the deceased. The applicant has listed in the schedule of distribution the assets of the estate as follows:

- (a) *L.R. Othaya/Ihuririo/603 Approx. 1.3668 Ha.*
- (b) *K.T.D.A. Farmers co. Ltd. share certificate No. A 25293*
- (c) *Gitugi Tea Factory Co. Ltd. founder share No. A03165*
- (d) *Gitugi Tea Factory co. Ltd. commercial share No. B05001.*
- (e) *Kenya Commercial Bank (Othaya) account No. 198000121*
- (f) *Iriaini Tea Factory co. Ltd. No. B01434.*

The applicant merely listed the assets of the estate without showing how the same should be distributed in her initial affidavit she swore in support of the summons for confirmation of grant. By her affidavit of 21<sup>st</sup> December 2009, the applicant corrected the anomaly. She proposed the deceased property should be distributed as follows:

1. *That Harrison Mwangi Muturi was husband to Margaret Wangui Mwangi the Petitioner while Grace Wanjugu (deceased) was mother to Mathew Maina Mwangi the protestor.*
2. *That I was present on 12<sup>th</sup> August, 1990 when deceased made her wishes alongside 10 witnesses.*
3. *That L.R. No. Nyandarua/Kiriita Shauri Block 1(Leshau Pondo)/574 was given to among others Zipporah Wahito, Juliah Wangeci, Grace Wanjugu who is mother to the protestor herein*
4. *That the protestor herein has his share at the said land in Leshau Pondo registered in his brother's name as a trust.*

Mathew Maina Mwangi, in his affidavit of protest opposed the summons for confirmation of grant on the ground that he was not involved in the succession proceedings. I do not think that is a serious averment because he came to these proceedings through a citation. He admits the applicant is a step-daughter in law to the deceased. Zakayo Maina Muturi in his affidavit of protest alleged that the applicant being a step-daughter in law to the deceased was not a beneficiary. Again I do not think that is a serious submission in view of the express provisions of the law of Succession Act.

Having considered the affidavit evidence and the written submissions filed by the protestors I have come to the conclusion that the protests filed herein have no merit. Those protests are hereby ordered dismissed. The grant is confirmed as prayed in the summons for confirmation of grant dated 3<sup>rd</sup> December 2008. This being a family dispute, I direct each party to meet his or her own costs.

**Dated and delivered this 26<sup>th</sup> day of February 2010.**

J.K. SERGON

JUDGE

In open court in the presence of the petitioner and Mr. King'ori h/b A. Kariuki for Respondents.

J.K. SERGON

JUDGE