



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NYERI Succession Cause 81 of 1998**

**IN THE MATTER OF THE ESTATE OF WANGUI MAINA – DECEASED**

**GRACE WAITITU MWANGI.....PETITIONER/APPLICANT**

**VERSUS**

**NGONYO GITHEMO**

**MIGWI NGONYO**

**MERCY WARINGA.....PROTESTORS/RESPONDENTS**

**LUCY NYAGUTHII**

**JUDGMENT**

A grant of Letters of Administration intestate in respect of the Estate of Wangui Maina, deceased, were granted to GITHEMO NGONYO, MIGWI NGONYO and GRACE WAITITU MWANGI on 19<sup>th</sup> February 2008. GRACE WAITITU MWANGI, hereinafter referred to as the ‘applicant’ took out the Summons for Confirmation of Grant dated 13<sup>th</sup> June 2008 in which she sought for aforesaid grant to be confirmed. The schedule of distribution filed by the Applicant proposed the parcel of land known as L.R. NO. KONYU/GACHUKU/1178 to be shared equally between Grace WM and Githomo Gachuhi. When this proposal was brought to the attention of GITHEMO NGONYO and GITHEMO GACHUHI, hereinafter referred to as the ‘Respondents,’ the duo opposed the Summons for Confirmation of Grant by filing a joint affidavit of protest. They proposed to have the property to be inherited by Githemo Ngonyo and Migwi Ngonyo. This Court directed both the Summons for Confirmation of Grant and the Protest to be determined on the basis of oral evidence.

GRACE WAITITU MWANGI (P. W. 1), testified alone in support of the application. She told this court that the deceased was survived by herself, Mercy Wareng Mwangi, Mary Ngonyo and Lucy Waguthii. She urged this court to find that the quartet, being the deceased’s children, were the only persons authorized to inherit their late mother’s Estate. She proposed that the parcel of land in dispute should be shared in equal portions between herself and the Respondents, the children of Mary Ngonyo, deceased, since her other sisters namely Lucy Waguthii and Mercy Waringa have each renounced their claim over the Estate.

Two witnesses testified in support of the Respondents’ case. JOSEPH GITHEMO NGONYO aka GITHEMO GACHUHI (D. W. 1), told this court that the deceased who was their grandmother bequeath the parcel of land in dispute to him and his brother Migwi during her life time and that they have since then been in occupation. He urged this court to award them the land to inherit exclusively. D. W. 1, however, admitted that the Applicant was entitled to a share because she was the deceased’s daughter. MERCY WARINGA (D. W. 2), told this Court that the deceased had given her land to Mary Ngonyo, deceased, leaving her, the Applicant and Lucy Waguthi out because they were married. D. W. 1 stated that by then Mary Ngonyo, deceased, had divorced with her husband. D. W. 2 was of the view that the

Applicant is not entitled to share because the land had already been given to Mary Ngonyo.

At the close of the evidence, learned counsels appearing in this cause were invited to file written submissions which they did. I have considered both the evidence and the submissions. It is not in dispute that the Applicant is a daughter of Wangui Maina, deceased. The deceased was blessed with four children namely: Grace Waititu Mwangi, Mercy Waringa, Lucy Waguthi and Mary Ngonyo. The quartet were all married but Mary Ngonyo, deceased, was divorced and was forced to go and live with her mother. It would appear Mercy Waringa and Lucy Waguthi have by conduct renounced their claim over the Estate of the deceased. Mary Ngonyo passed away leaving behind four children surviving her. Two sons and two daughters. The daughters are currently married. The two sons are Ngonyo Githemo and Migwi Ngonyo, the Respondents herein. The Respondents are in occupation of the suit premises. They are basically occupying the portion their late mother, Mary Ngonyo, was given by the deceased. The Respondents are alleging that they were given the land by the deceased through an oral will. The oral will was not established hence the Respondents' claim cannot stand. Mercy Waringa (D. W. 2) contradicted the respondents in that she claimed that her deceased mother had bequeath her land to Mary Ngonyo, deceased. Again, it is difficult to prove that allegation because it is based on an oral will which was not proved as required. This court is forced to apply the provisions of the Law of Succession Act in determining how the dispute can be resolved. There is no dispute that two of the deceased's daughters by conduct have renounced their claim over the Estate of Wangui Maina, deceased. This leaves Grace Waititu Mwangi (Applicant) and the children of Mary Ngonyo, deceased, to lay their claim A fair order is to order which I hereby direct, that the grant be confirmed on condition that the parcel of land known as L.R. LOC. KONYU/GACHUKU/1178, be subdivided into two equal portions. One portion shall be given to Grace Waititu Mwangi and the other portion be given to Githemo Ngonyo and Migwi Ngonyo being beneficiaries of the Estate of Mary Ngonyo, deceased. Each party to meet his or her own costs.

*Dated and delivered at Nyeri this 14<sup>th</sup> day of May 2010.*

**J. K. SERGON**

**JUDGE**

In open court in the presence of Mr. Waruinge for Protestors. No appearance Gacheru for Petitioner.