



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NYERI Succession Cause 575 of 2006**

**IN THE MATTER OF THE ESTATE OF KANYUGO WACHIRA – DECEASED**  
**PETER MUTURI KANYUGO.....PETITIONER**  
**VERSUS**  
**FAITH NYAMBURA KIRERU.....OBJECTOR**

**JUDGMENT**

**PETER MUTURI KANYUGO**, hereinafter referred to as the “Petitioner”, applied for a Grant of Letters of Administration intestate in respect of the Estate of Kanyugo Wachira, deceased. **FAITH NYAMBURA KIRERU**, hereinafter referred to as the “Objector”, filed an objection in her capacity as a purchaser of 1.0 acre to be excised from the parcel of land known as **L.R. NO. MAHIGA/KAMOKO/1299**. On 16<sup>th</sup> July 2008, this court issued the grant of Letters of Administration intestate in the joint names of both the Petitioner and the Objector. The Petitioner applied for the grant to be confirmed vide the Summons for Confirmation of Grant dated 24<sup>th</sup> October 2008. The Objector filed an affidavit of Protest dated 15<sup>th</sup> January 2009. On 16<sup>th</sup> January 2010, this court gave directions to the effect that both the Summons for Confirmation of Grant and the Protest be determined by affidavit evidence and by written submissions.

I have considered the affidavit evidence and the written submissions filed by both sides. In the Summons for Confirmation of Grant, the Petitioner has proposed to be declared as the sole beneficiary of the parcel of land known as **L.R.NO. MAHIGA/KAMOKO/1299**. The Objector on the other hand has stated that she ought to be declared as the sole beneficiary of the aforesaid parcel of land. She also claimed that parcel **L.R.NO. MAHIGA/KAMOKO/1299** is a sub-division of **L.R.NO. MAHIGA/KAMOKO/1254**. She claimed she paid the deceased a sum of Ksh.80,000/= and transferred 3 acres in form of shares in Narumoru Farmers Company Limited in exchange as a consideration of the 1 acre. The Objector attached to her further affidavit of Protest mutation forms in respect of **L.R.NO. MAHIGA/KAMOKO/1254** and the official searches of the resultant sub-divisions i.e. **MAHIGA/KAMOKO/1297, 1298** and **1299**. The Objector also attached to her further affidavit of Protest a letter of confirmation from Narumoru Farmers Company Limited that the deceased was registered as the owner of 3 acres on 26<sup>th</sup> September 2000. It is the argument of the Objector that the deceased sub-divided **L.R.NO. MAHIGA/KAMOKO/1254** into three portions i.e. **MAHIGA/KAMOKO/1297-1299**. He transferred **L.R.NO. MAHIGA/KAMOKO/1297** to **MARY WANJIRU KANYUGO** and **LR.NO. MAHIGA/KAMOKO/1298** to **CHRISTOPHER MWANGI KARAHU** while he retained **L.R.NO. MAHIGA/KAMOKO/1299**. It is the submission of the Objector that the deceased intended to transfer the aforesaid parcel to her but unfortunately he died before doing so. The Petitioner attempted to discredit the validity of the Objector’s claim. The Petitioner urged this Court to find that the Objector’s claim should be regarded as a liability as opposed to being regarded as a beneficiary.

After a careful consideration of the evidence and the submissions, I am convinced that the Objector has raised serious issues which has persuaded me not to confirm the grant as proposed by the Petitioner. There is no doubt that the Objector transacted with the deceased over the sale of land. With respect, I agree with the submissions of Mr. Wachira, learned advocate for the Petitioner that it would be tantamount to enforcing specific performance of the alleged sale and exchange agreement between the deceased and the Objector if the Objector is given the share. The law presumes that only the net assets of an estate would be available for distribution. In other words issues such as debts owed by Estate must be settled first before the beneficiaries can be called upon to share the net Estate. It would appear the Objector herein has a claim against the Estate of Kanyugo Wachira, deceased. It is not in dispute that the only estate asset available for distribution in respect of the Estate of Kanyugo Wachira, deceased is the parcel of land known as **L.R.NO. MAHIGA/KAMOKO/1299**. If the aforesaid asset is shared out, then there will be nothing to be used to settle the claim by the Objector if her claim is established thereafter. A fair order to make in this cause is to suspend the confirmation of grant until the claim against the Estate is determined. The Objector is directed to take the necessary steps to establish her claim against the Estate within the next six months. I have purposely fixed a time frame to avoid this matter procrastinating further. Costs of these proceedings to be met by the Petitioner.

*Dated and delivered at Nyeri this 9<sup>th</sup> day of July 2010.*

**J. K. SERGON**

**JUDGE**

In open court in the presence of Wachira holding brief Mugo for Petitioner and Kimunga holding brief Miss Mwai for objector.