



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NYERI**

Succession Cause 262 of 1999

IN THE MATTER OF THE ESTATE OF NJUEINI WANGOMBE– DECEASED

DAVID GITAH NJUEINI.....PETITIONER

VERSUS

BENEDICT MURIITHI WANG'ONDU.....OBJECTOR

AND

**JANET WOTHAYA NJUEINI
RAPHAEL KING'ORI NJUEINI
PAUL WAHOMENJUEINI**

JUDGMENT

On the 9th day of March 2009, **DAVID GITAHI NJUEINI** and **BENEDICT MURIITHI WANG'ONDU**, were granted Letters of Administration intestate in respect of the Estate of Njueini Wang'ombe, deceased. **DAVID GITAHI NJUEINI**, hereinafter referred to as the "Applicant", applied for the grant to be confirmed vide the Summons for Confirmation of Grant dated 5th October 2009. **BENEDICT MUREITHI WANG'OMBE**, hereinafter referred to as the "Objector", filed an affidavit of Protest to contest the Summons for Confirmation. This Court directed the summons and the Protest to be determined by affidavit evidence and written submissions.

I have considered the affidavit evidence and the written submissions filed by both sides. In the Summons for Confirmation of Grant, the Applicant had proposed to have the parcel of land known as **THEGENGE/KARIA/872** to be shared equally between:

- (i) **JANET WOTHAYA NJUEINI**
- (ii) **DAVID GITAHI NJUEINI**
- (iii) **RAPHAEL KINGORI NJUEINI** to hold in trust for himself and the children of **TABITHA WANJIRA NJUEINI**, deceased.

The Objector on the other hand, was of the view that the proposed mode of distribution should not be approved because there is evidence that the Tetu Land Disputes Tribunal had made an award in which the sale of land agreement of one (1) acre between the deceased and the Objector's father was recognized. It is the submission of the Objector that the arbitral award filed by the Tetu Land Disputes Tribunal has not been set aside hence the same should be taken into account before distribution. According to the Applicant, the award which was entered as the judgment of the Court on 10th November 1993 proposed that the Objector herein to complete the purchase by topping up the purchase price according to the current value of the portion or accept a refund of Ksh.430/= paid as a deposit. It is said the aforesaid amount was deposited with the Public Trustee hence the terms of the judgment was settled. **JANET WOTHAYA NJUEINI, RAPHAEL KINGORI NJUEINI, PAUL WAHOME NJUEINI, JULIUS GITONGA NJUEINI and SAMUEL MWANGI KARURI** hereinafter referred to as the "Protestors", also filed a joint affidavit of protest in which they rejected the Applicant's proposed mode of distribution. They all wanted the asset of the Estate to be distributed equally between the deceased's children and the grandson. The dispute between the Applicant and the Protestor is not difficult to solve. The difficult part is that between the Applicant and the Objector. The later dispute should be sorted out first before the former can be solved. The reason is that it is only the net estate that can be distributed. In this case it is admitted that the deceased sold one (1) acre to be excised from **L.R. NO. THEGENGE/KARIA/872** to the late father of the Objector. The dispute was sent for arbitration and an award was filed. The Applicant has stated that a refund of the purchase price i.e. Kshs.430/= has been deposited with the Public Trustee. I do not know why that money was deposited with the Public Trustee which is not a party to this succession proceedings. It is obvious that the award and or judgment is a liability to the Estate of Njueini Wang'ombe, deceased. Let the liability be settled first before the grant can be confirmed. For the avoidance of doubt, I hereby postpone the confirmation of grant for a period of six (6)

months to enable the Applicant sort out the claim by the Objector. It is after the determination of the aforesaid claim that the Protestors' protest may be revisited. The Estate to meet the costs of the Objector.

Dated and delivered at Nyeri this 9th day of July 2010.

J. K. SERGON

JUDGE

In open court in the presence of Mr. Macharia holding brief Mwangi for Protestor. Mr. Kimunya holding brief A. K. Kariuki for the 3rd Applicant.