



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NYERI**

**SUCCESSION CAUSE NO. 373 OF 2005**

**IN THE MATTER OF THE ESTATE OF KARUNGARI GITHIACA KIBANYA – DECEASED**

**STEPHEN MWANGI KARUGI .....PETITIONER**

**VERSUS**

**STEPHEN MAINA WATIRI.....PROTESTOR**

**JUDGMENT**

A grant of letters of administration intestate in respect of the Estate of Karungari Githiaca Kibanya, deceased, was given to **Stephen Mwangi Karugi**, the petitioner herein, on 9<sup>th</sup> October 2008. On 16<sup>th</sup> April 2009, the Petitioner applied for the grant to be confirmed vide the Summons for confirmation of grant of the same date. **Stephen Maina Watiri**, hereinafter referred to as “the Protestor”, filed an affidavit of Protest to oppose the Summons for confirmation of grant. Directions were given to the effect that the Protest and the Summons for Confirmation of grant be disposed of by oral evidence. When the dispute came up for hearing, the Protestor testified and tendered the evidence of three (3) witnesses in support of the Protest whereas the Petitioner testified alone without the benefit of independent witnesses.

I have considered the evidence tendered by both sides. I have already stated that the Protestor testified and summoned the testimonies of three other witnesses. According to the Protestor (P.W.1), the parcel of land known as **L.R. NO. KIRIMUKUYU/KARIA/515** was given to him by the deceased during her lifetime since he lived with her whereas the petitioner herein who was living with his father has inherited the land of his father. Mary Kabui (P.W.2) corroborated the evidence of P.W.1 that the late Karungari Kibanya had given the land *intervivos* to the Protestor. P.W. 2 claimed she was summoned by the deceased who was her grandmother where she informed her of her decision to bequeath the land in dispute to the Protestor. Loise Wangu (P.W.3), the deceased’s daughter told this Court that she was summoned by the deceased whereupon she informed her that she had given the land in dispute to the Protestor who took care of her during her lifetime. It is important to note that the Petitioner did not cross-examine P.W. 3 despite having been given a chance to do so. Margaret Wairimu (P.W. 4) corroborated the evidence of P.W. 1, P.W. 2 and P.W. 3 that the deceased gave the land in dispute to the Protestor during her lifetime.

The Petitioner on his part denied the allegation that the deceased gave the land to the Protestor. He, however, admitted that he lived with the deceased until 1968 when he left to live with his mother who was married in Nyahururu. He claimed he had also been summoned by the deceased whereupon she told him he would get a share of the land.

I have considered the evidence tendered by the protagonists. The issue which has been put for the determination of this court is who and how should the parcel of land known as **L.R. NO. KIRIMUKUYU/KIRIA/515** be shared? The Petitioner is of the view that the same be shared in equal measure between him and the Protestor. On the other hand, the Protestor is of the view that the land had been solely given to him *intervivos* by the deceased. There is no doubt that the Protestor and the Petitioner are cousins and grandsons of the deceased. I observed the demeanor of P.W.1, P.W.2, P.W.3 and P.W.4 as they testified before me. They appeared to be truthful witnesses whose evidence is reliable. The quartet

showed no animosity against the Petitioner. They were consistent in their testimonies that the deceased gave her land i.e. **L.R. NO. KIRIMUKUYU/KIRIA/515** *intervivos* to the Protestor. P.W.2, P.W.3 and P.W.4 were emphatic that the deceased summoned them and told them that she had solely given the land to Stephen Maina Watiri. There is also no dispute that Stephen Maina Watiri lived with the deceased while the Petitioner lived with his mother in Nyahururu. I am unable to accept the evidence of the Petitioner that the deceased told him that he would share the land with the Protestor. The Petitioner failed to call for evidence to back up his assertion unlike the Protestor who summoned the evidence of three consistent witnesses.

In the end I find the protest to be well founded. Consequently the grant of letters of administration given is re-issued and confirmed in the name of Stephen Maina Watiri. I am convinced the parcel of land known as **L.R. NO. KIRIMUKUYU/KIRIA/515** was given *intervivos* to Stephen Maina Watiri. Consequently the same will be solely inherited by the Protestor as per the wishes of the deceased. In sum the summons for confirmation of grant dated 16<sup>th</sup> April 2009 is dismissed and the grant is issued and confirmed in terms of the affidavit of protest by Stephen Maina Watiri. Since the dispute involves members of the same family, I direct that each party meets his own costs.

***Dated and delivered at Nyeri this 19<sup>th</sup> day of November 2010.***

**J. K. SERGON**

**JUDGE**

In open court in the presence of the parties.