

**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI
MILIMANI LAW COURTS
SUCCESSION CAUSE NO.2225 OF 2008**

IN THE MATTER OF THE ESTATE OF KESIA WANJIKU GITAU (DECEASED)

JOHN KURIA WAGEMA.....APPLICANT

VERSUS

MARIA WANGARI GITHERE.....RESPONDENT

R U L I N G

The estate to whose these proceedings relate to is that of Kesia Wanjiku Gitau (deceased). The deceased was blessed with three (3) daughters namely, Maria Wangari, Rachel Nyambura and Wanjiru. Rachel Nyambura and Wanjiru pre-deceased Kesia. Wanjiru was not blessed with any children at the time of her death. Rachel Nyambura was married to the applicant John Kuria Wagama. They were blessed with five (5) children. The deceased owned a portion of land known as Githunguri/Githunguri 400 (*the suit property*). The suit property measures about three and a half (3.5) acres. According to the applicant, prior to her death, the deceased had indicated the manner in which the suit property was to be distributed. According to the applicant, the surviving children of the deceased, who left behind beneficiaries, were supposed to inherit each a portion of land measuring one and a half (1.5) acres. In addition, the applicant submitted that he was entitled to inherit an extra half an acre because he had taken care of the deceased prior to her death. On her part, the respondent confirmed that indeed the applicant and herself were entitled to each inherit one and a half (1.5) acres of land. She however disputed the assertion by the applicant that he was entitled to inherit the extra half an acre. It was her case that the half an acre should be inherited by Mary Nyakinyua Murichu, a grand-daughter of the deceased. The reason for this proposal was that the said grand-daughter took care of the deceased during her old age before her death.

Having evaluated the facts of this case, it was clear that the applicant and the respondent are essentially agreed on the mode of distribution to be adopted by the court in respect of the only asset that comprise the estate of the deceased. They have agreed that each of them will inherit one and a half (1.5) acres. The dispute is in regard to whether Mary Nyakinyua Murichu, the grand-daughter of the deceased shall inherit the remaining half an acre portion or the same should be inherited by the applicant. This court is of the view that the proposal by both the applicant and the respondent that each of them inherit a portion of the suit land measuring one and a half (1.5) acres each shall be adopted as the order of the court. The applicant did not advance any cogent reason to deny Mary Nyakinyua Murichu the half an acre portion of land that she obviously is entitled to having taken care of the deceased during her old age prior to her death.

In the premises therefore, the suit property shall be divided into three portions measuring 1.5 acres, 1.5 acres and half an acre which shall be inherited respectively by Maria Wangari, John Kuria Wagama and Mary Nyakinyua Murichu. The certificate of confirmation of grant issued by this court on 2nd June 2010 is therefore annulled. Another certificate of grant shall be issued by the court to reflect the mode of distribution now decided by the court. Since this was a family dispute, there shall be no orders as to costs.

DATE AT NAIROBI THIS 1ST DAY OF NOVEMBER, 2010

**L. KIMARU
JUDGE**