



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

**Succession Cause 532 of 2005**

**IN THE MATTER OF THE ESTATE OF PETER MWANIKI GITHAIGA ..... DCD**

**AND**

**ESTHER MUTHONI MWANIKI ..... PETITIONER**  
**JUDGMENT**

This judgment relates to an affidavit of protest against confirmation of grant filed by Esther Muthoni Mwaniki. She described herself as the wife of the deceased in this succession cause. She is also the mother of her co-petitioner Francis Wanjohi Mwaniki and Daniel Githaiga and Clement Macharia. Her co-petitioner Francis Wanjohi applied for confirmation of grant and sought distribution as follows:-

1.Githi/Igano/417 to Esther Muthoni Mwaniki to have a life interest and thereafter to Francis Wanjohi Mwaniki absolutely.

2.Githi/Muthambi/796 Esther Muthoni Mwaniki to have a life interest and thereafter to Clement Macharia Mwaniki.

In protesting Esther Muthoni stated that the distribution suggested by her co-administrator had left out a grand son namely Peter Mwaniki Gakio. She suggested that he be given one acre of Githi/Igano/147. she also suggested that in case of Githi/Muthambi/796 be given to Daniel Githaiga Mwaniki one acre, Clement Macharia Mwaniki one acre and herself 0.5 acre. The matter proceeded by way of viva voce evidence. From the evidence adduced it was clear that the grandson mentioned by the protestor was deceased. That was proved by a letter from the office of the Assistance Chief of Mweru sub location. The protestor added the name of Daniel Githaiga amongst the people to benefit from the property. The co-administrator however said that Daniel Githaiga had obtained the share of the estate prior to the confirmation. This was not denied by the protestor. Having not been denied Daniel Githaiga is not entitled to the present estate. In my view the just decision and indeed of this court is that the affidavit of protest filed in this court on 1<sup>st</sup> May 2008 by Esther Muthoni Mwaniki is hereby dismissed. The court does hereby confirm the grant as prayed in the summons dated 25<sup>th</sup> April 2008. There shall be no orders as to costs

***Dated and delivered at Nyeri this 22<sup>nd</sup> day of October 2008.***

**MARY KASANGO**

**JUDGE**