

REPUBLIC OF KENYA

IN THE HIGH COURT AT NYERI

SUCCESSION CAUSE 225 OF 2005

IN THE MATTER OF THE ESTATE OF KARUGA KIHARA

alias KARUGA C/O KIHARA.....DECEASED

JOSEPH KARUGA MUNYI.....PETITIONER

Versus

FRANCIS NGACHA MUNYI.....OBJECTOR

JUDGMENT

The petitioner in petitioning for Letters of Administration stated that the deceased was survived by himself, a nephew, and by Eugenia Wairimu, a daughter to the deceased. The asset of the estate is GITHU/KIHARO/187. At confirmation of grant the petitioner prayed that the estate asset be distributed equally between himself and James Kihara Karuga. An objection was raised by Francis Ngacha Munyi. The said objector is the brother to the petitioner. The hearing of that objection proceeded by way of *viva voce* evidence. The information that came from that evidence was that the estate property belonged to the paternal uncle of both the petitioner and the objector. This uncle had two children a boy and a girl. The daughter was included in the petition. The son disappeared a long time ago from his father's home. There was no clear evidence of the exact date of his disappearance. It was however stated that it was during the time that people were residing at the village. That would seem to be in the 1950s. Both in evidence by the petitioner and the objector is clear that their paternal uncle before his death had given the estate property to the petitioner on condition that if the lost son, who was called Kihara Karuga did return the petitioner was to share that property with him. To date he has not returned. The petitioner is therefore entitled to the whole of that land but he stated that he desires to share it with James Kihara Karuga, namesake of the lost son. The objector was of the view that he is also entitled to inherit the uncle's property. The objector did not lay any basis for making that claim. Even the witnesses that he called confirmed that the property had been given to the petitioner and this was because the deceased daughter was then married. **In the end the court finds that objector has failed to prove his case on a balance of probability. The same is hereby dismissed with no orders as to costs.**

MARY KASANGO

JUDGE

Dated and delivered at Nyeri this 15th day of November 2007.

By: M. S. A. Makhandia

JUDGE