



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT EMBU**  
**Succession Cause 155 of 2005**

**IN THE MATTER OF ESTATE OF MUGO NDWIGA.....DECEASED**

**SOFIA MUTHONI MUGO.....PETITIONER**

**VERSUS**

**PETER NYAGA MUGO .....OBJECTOR**

**JUDGMENT**

The deceased, Mugo Ndwiga died possessed of:

- 1. Plot No. Ngandori/Kiriari/2093**
- 2. Plot No. Ngandori/Kiriari/2092**
- 3. Plot No. Ngandori/Kiriari/2246**

After his death his widow petitioned for a grant of representation she listed as beneficiaries her eight (8) children. On 9/6/2005 all the children including the protestor consented to their mother the petitioner be issued with grant of representation. This was in order and in compliance with the order of priority set out under section 66 Succession Act Cap. 160.

However on 21/7/2005 the Objector Peter Nyaga Mugo a son of the deceased, filed Objection stating that:-

1. That the children of deceased did not consent to the Petition of Petitioner to be representative of their father's estate.
2. That the signatures in the consent form 38 were forgeries.
3. That the Petitioner has filed this Petition in corroboration with outsiders and objector and other brothers are convinced that there were fishy dealings between their mother and these persons.

Both the Objector and Petitioner gave evidence.

It appears that the dispute hinges on a building known as Tea Centre which is erected on the deceased land. These people calling themselves TR 8 KERIA Tea Buying Centre are not beneficiaries of the estate. They may have a claim against the estate but they must lodge their claim in the normal way.

When the objector gave evidence he did not prove his allegations that the signatures and particularly his own were forged. PW2 the daughter who gave evidence said that the girls were requested by Objector to give their (I.D) Cards and that he is the one who completed the forms. He did not offer any evidence that anyone committed forgery which is criminal offence. Neither has he proved that his mother the Petitioner has distributed the deceased land to strangers.

I therefore do not find any merit in the Objection. The widow, Petitioner herein has priority over all children to take a grant especially where they are all adults or unless it is so desired. As it is the Objector wants to petition for the grant himself. He is not the eldest child and it is clear there would be many disputes if he was to be joined as administrator.

I therefore dismiss the Objection and confirm that the widow is the rightful petitioner. Grant of representation shall issue to her to be confirmed within 6 months from today.

Dated this 28<sup>th</sup> day of February 2006.

**J. N. KHAMINWA**

**JUDGE**