



**REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA AT NYERI  
Succession Cause 4 of 1999**

**IN THE MATTER OF THE ESTATE OF MURAYA WAHOME – DCD**

**AND**

**JOHN MWANGI MURAYA .....**  
**.....PETITIONER**

**VERSUS**

**1. GRACE MUTHONI MURAYA**

**2. EDWARD KABUE MURAYA**

**3. CHARLES KIBARA MURAYA**

**4. JOSPHAT KARIUKI MURAYA**

**5. GIBSON GACHAGUA MURAYA**

**6. JOHN NDERI MURAYA**

**7. JANE MUMBI MURAYA.....**  
**.....OBJECTORS**

**R U L I N G**

The proceedings in this case were initiated in the Senior Resident Magistrate's Court Nyeri by Marion Mwhaki Muraya on 23rd February 1989 when she petitioned for letters of administration intestate to the estate of Muraya Wahome deceased.

On 29th June 1989, Grace Muthoni Muraya, Edward Kabue Muraya, Francis Muchemi Muraya, Charles Kibara Muraya, Josphat Kariuki Muraya, Gibson Gachagua Muraya, John Nderi Muraya and Jane Mumbi Muraya (hereinafter referred to as the Objectors) filed an objection and Answer to the Petition contending that the deceased had made an oral will bequeathing the estate to Grace Muthoni Muraya and that the Objectors were the ones in occupation of the land forming the estate of the deceased. They also filed a Petition by way of Cross Petition for letters of Administration to issue to Edward Kabue Muraya. The Petitioner died on 21st September 1989 and an order was made on 10th July 1990 for John Mwangi Muraya to be substituted in her place.

On the 11th September 1990 the dispute was referred by consent of the parties to arbitration before the D.O. Tetu assisted by 4 elders. An award was subsequently filed on the 25th June 1991 and read on 1st October 1991. According to the award the 4 elders were equally divided so the chairman used his position and ruled that the estate of the deceased comprised of only plot No. Aguthi/Gaki/148 measuring 5 acres

and that the same should be shared out equally between the two houses of the deceased as represented by his two widows.

Attempts by the objectors to have the award set aside were not successful. Instead the award was adopted as judgment of the court on the 20th September 1993. On the 15th December 1993 the Petitioner applied to the court to confirm letters of administration and grant, to the petitioner and objectors, proposing that Aguthi/Gaki/148 be distributed as follows:

John Mwangi Muraya - 0.337 Hectares

Godfrey Kibaara Muraya - 0.337 Hectares

Paul Kibara Muraya - 0.336 Hectares

Grace Muthoni Muraya - 1.01 Hectares

This application was opposed by the objectors contending that the application was premature as no distribution could take place before the determination of the administrators, and that in any case the proposed distribution was not in accordance with the award of the court.

The objectors further brought an application under Rule 63 (1) of the Probate and administration Rules and Order L rule 1 of the Civil Procedure Rules seeking to have the ruling and judgment of the court dated 9th August 1993 reviewed and set aside. Both applications remain pending.

On the 11th July 2001, the parties advocates appeared before Hon. Juma J who gave directions that the “*dispute be heard by way of viva voce evidence.*” I am rather at a loss as I am not certain as to which dispute the directions refer to. Nonetheless the matter was fixed for hearing on several occasions culminating in the ruling made on the 14th November 2005 rejecting any further application for adjournment and ordering the matter to proceed.

Mr. Wahome has now urged me to dismiss the objection under rule 17 of the Probate and administration Rules. I am not sure whether Mr. Wahome means the original objection to the petition or the objection to the confirmation. Moreover the original objection appears to have been resolved through the arbitration award which was adopted as judgment of the court on 20th September 1993. On the other hand I am not able to deal with the application for confirmation of the grant as no grant appears to have been issued in the first instance. Going through this file it is evident that there are quite a number of procedural issues which need to be sorted out. This being a very old case, I have endeavoured to carefully peruse the file with a view to establishing the position of this matter in a bid to assist the parties. It may well be that I have missed out on certain issues. I do believe that it would be fair and just for me to have this case stood over generally to enable the parties to take action as may be appropriate to facilitate the finalization of this long outstanding matter.

I make no orders as to costs. Orders accordingly.

***Dated signed and delivered this 29th day of November 2005***

**H. M. OKWENGU**

**JUDGE**