



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

**Succession Cause of 19 of 2003**

**IN THE MATTER OF THE ESTATE OF SIMON MWANGI KIAMBATI**

**alias MWANGI S/O**

**KIAMBATI.....DECEASED**

**EZEKIEL KARIUKI MWANGI.....**

**.....PETITIONER**

*Versus*

**JANE GATHONI WAITITU.....**

**.....PROTESTOR**

**JUDGMENT**

The protestor JANE GATHONI WAITITU is the daughter of the deceased hereof. The estate has the following properties:

- (1) GICHINGA/GIKIGIE/257
- (2) OTHAYA/KIHUGIRU/172.

The Petitioner is the brother to the objector and the son of the deceased. In his application for confirmation of grant the Petitioner did not include the objector in the distribution. The Petitioner distributed the property to himself and to other brothers, one of whom was represented by the widow because he is now deceased. In respect of parcel No. 257 the same was distributed to the deceased's sons. Parcel No. 172 was distributed to the deceased's sons and also to the son of the objector.

In her evidence the protestor said that she was one of the children of the deceased although she was married in 1971 and does not reside on the estates property. She stated that she enjoys the benefits of parcel No. 172 but failed to give details of those benefits. She went on to say that the deceased did not distinguish his children on the basis of gender. She was of the view that the deceased wanted her to share in the estate property. During the lifetime of her parents when her mother was ailing the deceased allowed the mother to live with the objector so that the objector could take care of her. During cross examination the objector said that the coffee and tea on parcel No. 172 had been given to her. The protestor in evidence said that her protest was on the basis that she is one of the children of the deceased. In saying that the deceased did not distinguish the children on the basis of gender she said that it was understood that she would inherit the land. In respect of parcel No. 257 she stated that the tea and coffee given to her is rented out to third parties. The renting out was during the lifetime of the deceased and the rental income was given to her to enable her to buy medicine for her mother.

She called P.W.2 a brother to the deceased. In his evidence he said that the deceased regarded all his children as sons. That he had shared with him that the children were all equal and should therefore inherit from him equally. He confirmed that the objector was given by the deceased tea bushes on parcel No. 257.

The Petitioner in his evidence stated that the deceased had shown his sons during his lifetime the portion that they were to inherit. He said that the objector was married in 1968 and has never cultivated any of the deceased land. In respect of parcel 172 the Petitioner said that it was to be inherited by the grand sons who are named after him.

From the evidence adduced in court it does seem that although the objector was married she maintained her family ties particularly to her parents. That is evidenced by the fact that the deceased entrusted their mother to her for her to take care of her during her illness. During his lifetime the deceased gave the objector tea bushes which she stated were forcibly taken away from her by her siblings on the death of their parents. The deceased brother P.W.2 confirmed this. That being the case, the court accepts the objectors evidence that the deceased did intend that she would inherit the objectors son has been given land on parcel No. 172. I am of the view that justice is best served by having parcel No. 257 divided amongst the sons of the deceased and the objector. The judgment of this court is as follows:

**1. That parcel No. GICHINGA/GIKIGIE 257 be shared equally amongst the following:**

**EZEKIEL KARIUKI MWANGI**

**NICASIO GATHII MWANGI**

**MAGDALINE KAMUYU KIAMBATI**

**JANE GATHONI WAITITU**

**2. In respect of parcel No. OTHAYA/KIHUGIRU/172 the same shall be distributed as follows:**

**EZEKIEL KARIUKI MWANGI**

**NICASIO GATHII MWANGI**

**MAGDALINE KAMUYU KIAMBATI**

**SIMON MWANGI WAITITU**

**3. There shall be no orders as to costs.**

**MARY KASANGO**

**JUDGE**

***Dated and delivered at Nyeri this 15<sup>th</sup> day of November 2007.***

**By: M. S. A. Makhandia**

**JUDGE**