



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYERI

Civil Appeal 192 of 2002

STEPHEN MUNENE MURATHI.....APPELLANT

Versus

GEOFFREY MAGONDU MITAMBO.....RESPONDENT

**(Appeal from the Judgment of J. N. Nyaga S.R.M.  
in Succession Cause No. 36 of 2000 delivered on  
22nd November 2002 in the S.R.M.'s Court,  
Karatina)**

JUDGMENT

This appeal comes from a Succession Cause No. 36 of 2000 in the Senior Resident Magistrate's Court at Karatina concerning the estate of Munathi Gathoroko where three persons, namely, Stephen Munene Munathi, Geoffrey Magondu Munathi and Mary Mumbi Githui, were together issued with a Grant of Letters of Administration on 14th September 2001.

When the Summons for Confirmation of that grant was filed (by Chamber Summons dated 18th March 2002), Geoffrey Magondu Munathi, one of the administrators, filed an affidavit of protest because he did not agree with the proposed equal sub division of the deceased's parcel of land registration No. **MAGUTU/GATEI/206** into three portions so that each one of the three coadministrators gets 0.36 hectare. According to him his father had verbally distributed the land into four portions so that the father (the deceased) remained with a portion for himself after dividing the land between the above mentioned three beneficiaries in equal shares. The Protester, Geoffrey Magondu Mitambo relied on a document he claimed had been written and signed by the deceased in the presence of witnesses named in the document which concluded by giving the portion of land retained by the deceased to Geoffrey Magondu Mitambo after the death of the deceased.

That evidence was before the trial magistrate who at the end wrote the judgment dated 22nd November 2002 granting the protest and this appeal is against that judgment.

I have carefully considered the evidence adduced before the learned Senior Resident magistrate in the light of the submissions made before me. The whole thing has become a dispute between the appellant Stephen Munene Murathi and the Respondent Geoffrey Magondu Mitambo and it would appear that Mary Mumbi Githui, the third Co- Administrator, does not exist. Clearly she did not appeal, meaning she is not against the magistrate's judgment dated 22nd November 2002.

From the proceedings before the learned magistrate, I hold the opinion that, on the balance of probabilities, there was sufficient evidence for him to have come to the conclusion he came to. There was genuine evidence, oral and documentary, expressing the wish of the Deceased in relation to the distribution of the suit parcel of land.

In the circumstances, I see no good reason for interfering with the trial magistrate's judgment.

Accordingly, this appeal is hereby dismissed with no order as to costs because the Appellant and the Respondent are brothers who should live together in unity and peace.

As the trial magistrate's judgment dated 22nd November 2002 should have confirmed the Grant of Letters

of Administration dated 14th September 2001 and a certificate of Confirmation of Grant issued, the relevant case file be taken back to the trial court for action to be taken – if to-date that has not been done.

***Dated this 27th day of May 2005.***

**J. M. KHAMONI**  
JUDGE

Present: Both parties in persons.