



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**SUCCESSION CAUSE 1834 OF 2000**

**IN THE MATTER OF THE ESTATE OF EUNICE WANJERI KIBIO**

**(DECEASED)**

**JUDGMENT**

This judgment determines the Summons for confirmation dated 24th September 2002. The petitioner sought for the confirmation of the grant issued on 15th February 2001 and obtained the consents of two beneficiaries namely Ruth Wanjiru Kibia and Mary Kanini Kibia. On the other hand Samuel Gathaiya Kibia filed an affidavit of protest and proposed an alternative mode of distribution as stipulated under paragraphs 7- 11 of his affidavit. His proposed mode of distribution is supported by the following beneficiaries

- 1) John Kamau Kibia
- 2) Muturi Kibia
- 3) Margaret Wakanyi Kibia

According to the applicant the deceased who died in 1980 before the commencement of the Law of Succession Act in 1981 was survived by 11 children out of which he excludes (5) five daughters of the deceased whom he claims are married daughters. The applicant therefore list the following as the ones entitled to inherit the deceased estate

- 1) John Njau Kibia
- 2) Samuel Gathaiya
- 3) Muturi Kibia
- 4) John Kamau
- 5) Ruth Wanjiru Kibia
- 6) Mary Kanini Kibia

On the other hand the protestor list the following persons as the ones who are entitled to inherit the deceased estate.

- i) John Njau Kibia
- ii) Samuel Gathaiya

iii) Muturi Kibaia

iv) John Kamau

v) Ruth Wanjiru

vi) Mary Kanini

vii) Margaret Wakonyo Kabia

viii) Members of Mbari ya Munga Clan (Trustees Samuel Gathaiya, Kinuthia Kibocho and Waweru Mugo

I have given due consideration to both affidavits and it appears that the protestor has included the name of Margret Wakonyo a married daughter as a beneficiary. On the other hand the applicant has sought to exclude her on the grounds that she is married to a Mr. Wainaina. However there was no evidence that was produced to support this assertion. I find that Margaret her given a consent supporting the mode of distribution that was proposed by Samuel Gathaiya which proposal include her in the schedule of distribution. In the circumstances I would include Margaret as a beneficiary.

As regards the share proposed to be given to the clan of Mbari ya Mungo as proposed by the affidavit of protestor, it is my considered view that these should be excluded as beneficiaries of the deceased estate. Apart from Samuel Gathaiya who in any event should be considered alongside other beneficiaries there is no evidence to show that Kinuthia Kibocho and Waweru Mugo are beneficiaries of the deceased estate. Accordingly, the following are the beneficiaries of the deceased estate who should share the deceased estate equally:

1) John Njau Kibia

2) Samuel Gathaiya

3) Muturi Kibia

4) John Kamau

5) Ruth Wanjiru

6) Mary Kanini

7) Margaret Wakonyo Kibia

It is not disputed that the protestor was issued with another grant of Letters of Administration in Succession Cause No. 206 of 1993 which grant was revoked in H.C.C. Succession Cause No. 926 of 1997. Pursuant to that grant the protestor had subdivided the deceased property known as Githunguri/Githunguri 1029 and some parcels were transferred and sold as follows:

1. Samuel Gathaiya Kibia LR No. Githunguri/Githunguri/2057 Comprising 0.053 hectares and sold to Simon Njoroge Kabogo

2. Muturi Kibia LR No. Githunguri/Githunguri/2058 comprising of 0.053 hectares which was sold to James Karanja Kamunyu

3. John Kamau Kibia Githunguri/Githunguri 2059 comprising 0.053 hectares which he sold to Joseph Chege Ileri.

Both the applicant and the protestor are in agreement that by virtue of Section 93 of Cap 160, this

property which was distributed and transfers were effected to innocent purchasers for value without notice of any defect in title should not revert to the estate.

Accordingly I am in agreement that those parcels should be treated as the shares of the three beneficiaries who sold them and the rest of the estate should be distributed equally to all the beneficiaries bearing in mind that Samuel, Muturi and John Kamau have appropriated 0.053 hectares each.

The other issue to consider is the properties forming part of the deceased estate. It is clear from the records that the following are the undisputed properties of the deceased

- a) Githunguri/Githunguri /2060) Original
- b) Githunguri/Githunguri/2061) Githunguri/Githunguri/
- c) Githunguri/Githunguri/2062) 1059
- d) Githunguri/Nyaga/680

I hereby direct that the above parcels of land be transferred back to the deceased's name and the same be distributed equally among the seven (7) beneficiaries of the deceased estate while taking into account the three beneficiaries who have already appropriated 0.053 hectares.

The grant of letters of Administration should therefore be confirmed in terms of this judgment. The administrator to submit a schedule of distribution that reflects the above findings.

Due to the unique nature of this matter, each party shall bear their own costs of this litigation and eventual transfers of the assets in their names. It is so ordered.

**Judgment read and signed on 3rd December 2004.**

**MARTHA KOOME**

**JUDGE**