



REPUBLIC OF KENYA



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In re Estate of Philip Wachira Koigu alias Wachira Koigu (Deceased) (Succession Cause 883 of 2009) [2025] KEHC 11861 (KLR) (1 July 2025) (Judgment)

Neutral citation: [2025] KEHC 11861 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYERI
SUCCESSION CAUSE 883 OF 2009**

MA ODERO, J

JULY 1, 2025

**IN THE MATTER OF THE ESTATE OF PHILIP WACHIRA
KOIGU ALIAS WACHIRA KOIGU (DECEASED)**

BETWEEN

KANJA WACHIRA KOIGU 1ST PROTESTOR

GRACE WAMBUI NDUNGU 2ND PROTESTOR

AND

RONALD KAHARU WACHIRA RESPONDENT

JUDGMENT

1. Before this Court for determination is the Affidavit of Protest Against Confirmation of Grant dated 17th April 2023 filed by Kanja Wachira Koigu (hereinafter referred to as ‘the Protestor’).
2. A second Affidavit of Protest dated 3rd October 2023 was filed by Grace Wambui Ndungu (hereinafter referred to as ‘the 2nd Protestor’)
3. The Respondent/Administrator Ronald Kaharu Wachira opposed the protests.

Background

4. This succession cause relates to the estate of the late Philip Wachira Koigu (hereinafter ‘the Deceased’) who died intestate on 29th May 1991. A copy of the Death certificate serial No. 386045 was filed in court on 28th September 2009.
5. The Deceased was survived by the following children;-
 - (a) Douglas Ndegwa Wachira
 - (b) Johnson Macharia Wachira



- (c) Henry Gichohi Wachira - (Deceased)
 - (d) Michael Wagura Wachira
 - (e) Harun Wambugu Wachira
 - (f) Grace Wambui Wachira
 - (g) Pricilla Wanjira Wanjau - (Deceased)
 - (h) Monica Wangari Mwangi
 - (i) Eunice Wambui Waweru
 - (j) Winfred Wanjugu Njoroge
 - (k) Thomas Kanja Wachira
 - (l) Samuel Kaharu Wachira - (Deceased)
 - (m) Ronald Kaharu Wachira
6. The estate of the Deceased comprised the following assets:-
- (i) Parcel of Land known as Mweiga/Gakanga/110 - measuring 7.4 Hectares.
 - (ii) Parcel of land known as Nyandarua/ndaragwa/block 1 (Kahutha) 88
7. Following the demise of the Deceased Grant of Letters of Administration was on 1st April 2010 made to the Respondent Ronald Kaharu Wachira and Samuel Kaharu Wachira (now Deceased). The Grant was duly confirmed on 3rd February 2012.
8. The 1st Protestor herein Kanja Wachira Koigu then filed a Summons for revocation of Grant dated 24th November 2021 on grounds that the Grant was obtained fraudulently by making of false statements. The 1st Protestor further alleged that he had been left out of the distribution of the property. The 1st Protestor categorically denied that he has ever held the name 'Thomas' as was stated in the grant.
9. Vide a Ruling delivered on 19th October 2022, Hon. Justice Njagi (retired) allowed the Summons for revocation of Grant and in doing so made the following orders:-
- “(a) The grant of letters of administration intestate to the estate of Philip Wachira Koigu granted to the late Samuel Kaharu Wachira and Ronald Kaharu Wachira on 1/4/2010 and confirmed on 3/2/2012 in this matter is revoked.
 - (b) The sub-division and registration of land parcel Mweiga/Gakanja/110 into land parcels Mweiga/Gakanja/283,284, 285,286, 287, 288 and 289 is hereby cancelled.
 - (c) The Land Registrar Nyeri is hereby ordered to rectify the register by cancelling title Nos. Mweiga/Gakanja/283, 284, 285, 286, 287, 288 and 289 and the titles to the said parcels of land are hereby ordered to revert to the original number; Mweiga/Gakanja/110 in the name of the deceased herein, Philip Wachira Koigu, for purposes of distribution of the deceased's beneficiaries.
 - (d) A fresh grant of letters of administration is to issue to the respondent herein, Ronald Kaharu Wachira.”



10. Following this ruling a fresh Grant was issued to the Respondent on 19th October 2022. The Respondent then filed a summons for confirmation of Grant dated 1st March 2023. In that Summons the Respondent proposed that the estate be distributed as follows;-

- “(a) Mweiga/Gakanga/110 to be shared as follows:-
1. Samuel Kaharu Wachira (DCD) - 1.4 acres
 2. Harun Wambugu Wachira - 2.42 acres
 3. Ronald Kaharu Wachira - 2.54 acres
 4. Douglas Ndegwa Wachira - 2.75 acres
 5. Henry Gichohi Wachira (DCD) - 2.75 acres
 6. Johson Macharia Wachira - 2.67 acres
 7. Michael Wagura Wachira - 3.13 acres”

11. The two Protestors being dissatisfied with the mode of distribution proposed by the Respondent filed the aforementioned Affidavits of Protest. The matter was canvassed by way of oral evidence in open court.

The Evidence

12. The 1st Protestor Kanja Wachira Koigu stated that he had declined to sign the consent to confirmation of the Grant as the question of how the estate was to be distributed had not been discussed or agreed upon by the family.
13. The 1st protestor took great umbrage at the Respondents insistence of referring to him by the name ‘Thomas’ He annexed a copy of this National Identity Card No. 5491231 which gives his names as Kanja Wachira Koigu (Annexure ‘KWK 3’) to the Affidavit of protest dated 17th April 2023.
14. The 1st Protestor complained that he had been excluded from the list of persons who were to benefit from the estate. The 1st Protestor denied the allegation that the Deceased had during his lifetime gifted to him the parcel of land known as Mweiga/Gakanga/203.
15. According to the 1st Protestor the mode of distribution proposed by the Respondents was discriminatory as some of the Deceased’s children i.e himself and all the daughters of the Deceased have unjustifiably been excluded. His position was that the estate ought to be distributed among all beneficiaries paying no regard to their gender. The 1st Protestor stated that the mode of distribution proposed in the summons for Confirmation of Grant dated 1st March 2023 is a replica of the proposed mode of distribution in the confirmed Grant dated 3rd February 2012 which Grant had been revoked by the court. He proposes that the parcel of land known as Mweiga/Gachanga/110 be distributed equally amongst all the children of the Deceased save for those who have waived any right to inherit from the estate.
16. The 2nd Protestor Grace Wambui Ndung’u stated that she was the eldest child of the Deceased and is currently aged 87 years. She admits to having signed the consent to confirmation of the Grant but states that she did not clearly understand the contents of the document she was signing.



17. Further the 2nd, Protestor avers that she did not sign the consent before any advocate but stated that the document was brought to her home in Rurie - Nairutia which is almost 50 Kilometers away from Nyeri Town and that is where she signed the document.
18. The 2nd Protestor states that she has not waived her right to inherit from her father's estate and was not aware that the confirmed grant effectively disinherited her. She reiterates her belief that all children are equal under the law and asserts that as a daughter of the Deceased she is entitled to a share of his estate.
19. The 2nd Protestor states that at no time did the family ever meet to discuss the mode of distribution and at no time did she ever agree to the mode of distribution proposed in the summons for confirmation of Grant. She confirms that Mweiga Plot 203 belongs to the 1st Protestor and never at any time belonged to the Deceased. The 2nd Protestor proposes that the property known as Mweiga/Gakanga/110 be divided equally amongst all the beneficiaries.
20. The Respondent Ronald Kaharu Wachira confirms that he is the Administrator of the estate of the Deceased having been issued with letters of Grant of Administration on 19th October 2022. The Respondent confirms that he filed the Summons for confirmation of Grant dated 1st March 2023 in which he set out the proposed mode of distribution of the estate.
21. The Respondent stated that the two protestors were his siblings. He states that the 2nd Protestor signed the consent for confirmation of the Grant whilst the 1st Respondent declined to sign the same.
22. The Respondent explained that he did not include the 1st protestor as one of those to benefit from a share of Mweiga Plot 110 because the Deceased had during his lifetime made a gift of Mweiga Plot 203 to the 1st Protestor. That Mweiga Plot 203 was a mutation which came from Mweiga Plot 110 which belonged to the Deceased.
23. The Respondent states that he has proposed the distribution in accordance with the wishes of the Deceased. He stated that the Deceased had during his lifetime apportioned to each of his sons the land that was to be allocated to them. That the Deceased made no allocation of land to his daughters. The Respondent alleges that the 2nd Protestor has merely been incited by the 1st Protestor and that her claim over the estate is merely an afterthought. He states that the 2nd Protestor occupies seventeen (17) acres of land in Kieni West.
24. DW2 Eunice Wambui and DW3 Winfred Wanjogu are both daughters of the Deceased. Both stated that they had no interest in the estate of their late father. In effect both waived their right to inherit.
25. DW4 Esther Wanjiru is a grand-child of the Deceased being the daughter of Priscilla Wanjiru (now deceased) who was a daughter of the Deceased. DW4 stated that neither she nor her siblings wish to claim any share in the estate of the Deceased.
26. Upon conclusion of oral evidence the parties were invited to file and exchange final submissions. The protestors filed the written submissions dated 17th March 2025 whilst the Respondent relied upon his written submissions dated 30th May 2025.

Analysis and Determination

27. I have carefully considered this summons for confirmation of Grant, the two protests filed against that Summons, the evidence on record as well as the written submissions filed by the parties.



28. The protestors have asked the court to dismiss the summons for confirmation of Grant dated 1st March 2023 on grounds that no provision was made for the two in the mode of distribution proposed in that summons yet they are both children of the Deceased and therefore beneficiaries to his estate.
29. The Respondent denies the allegation that he has in this summons disinherited any of the rightful beneficiaries of the estate. Whilst conceding that the 1st and 2nd protestors are not provided for in the distribution of Mweiga Plot 110, the Respondent proceeded to explain why this omission was justifiable in his eyes. With respect to the exclusion of the 1st Protestor the Respondent states that he did not include 'Kanja' as he had already inherited a parcel of land from the Deceased. The Respondent accuses the 1st Protestor of seeking to benefit from a double inheritance.
30. It is trite law that he who alleges must prove. In law the burden of proof lies upon the party who asserts the existence of a fact or set of facts. Section 107 of the *Evidence Act* Cap 80 Laws of Kenya provide as follows:-

“Burden of Proof

- 107 whoever desires any court to give judgment as to any legal right or liability
(1) dependent on the existence of facts which he asserts must prove that those facts exist.
- (2) When a person is bound to prove the existence of any fact it is said that the burden of proof lies on that person.”

31. In the case of *Evans Nyakwana -Vs- Cleophas Bwana Ongaro* [2015] eKLR, it was held that:-

“As a general proposition the legal burden of proof lies upon the party who invokes the aid of law and substantially asserts the affirmative of the issue. That is the purport of Section 107 (1) of the *Evidence Act* Chapter 80 Laws of Kenya. Furthermore, the evidential burden is cast upon any party, the burden of proving any particular fact which he desires the court to believe in its existence. That is captured in Section 109 and 112 of the law of proof of that fact shall lie on any particular person.....” [Own emphasis]

32. The Respondent in his Further Supplementary Affidavit dated 25th October 2023 sought to rely on a letter dated 24th March 2000 (Annexure 'RKW') written by the District Land Registrar Nyeri to the Chief Land Registrar Nairobi. The letter states that Title No. Tetu/Kabage/141 registered in the name of the Deceased Wachira Koigu was to be exchanged with Parcel Nos 110, 203, 208 and 213 in Mweiga/Gakanga section which belonged to the Government. That this letter amounted to proof that Mweiga/Gakanga/203 originally belonged to the Deceased and was later gifted to the 1st Protestor by the Deceased.
33. However it is pertinent to note that in the very same letter it is indicated that “the transfer..... could not be registered because the exercise has not been completed in full.” The author of the letter concludes thus” I will feed you with the status position on the ground once I visit the area with the complainant.”
34. Therefore it is clear that this exchange and transfer of Plot 203 to the Deceased was yet to be concluded and registered. The Respondent has not availed any further evidence to prove that said exchange and transfer actually took place. No evidence was presented to court to show that Plot 203 was ever at any time registered in the name of the Deceased - thus no evidence was adduced to prove conclusively that this Plot 203 ever in fact belonged to the Deceased.



35. Secondly although the 1st protestors claims to have acquired this Plot 203 way back in the year 1975 to date forty (40) down the line, he still has no Title Document to the said property. There is also no evidence of the transfer by way of gift of this property from the committee to the 1st Protestor.
36. The Respondent contends that Plot 203 was gifted by the Deceased during his lifetime to the 1st Protestor. However in the Replying Affidavit dated 12th November 2021, the Respondent himself annexed a certificate of Official Search dated 8th November 2021 in respect of Mweiga/Gakanga/203. That search reveals that as at November 2021 the said parcel of land was registered neither the Deceased or to the 1st Protestor but was in fact registered to the ‘Government of Kenya’.
37. By his allegation that the Deceased had during his lifetime made a gift of Plot 203 to the 1st Protestor, the Respondent would be seeking to rely on Section 42 of the *Law of Succession Act* which provides that where an intestate had during his lifetime or by will paid, given or settled any property for the benefit of one of his children that fact is to be taken into account in determining the share of the net estate finally accruing to said child. The Respondent is in effect alleging that the Deceased made a ‘gift intervivos’ of this Plot 203 to the 1st Protestor. In order for a ‘Gift Intervivos’ to be deemed valid and binding, there must be sufficient evidence to prove that the donor had done all that was necessary to have the gift perfected to facilitate the transfer of said gift inter vivos to the donee.
38. In re Estate of The Late Gedion Manthi Nzioka (Deceased) [2015] KEHC 944 (KLR) the Court stated that:-
- “.....Gifts of land must be by way of registered transfer, or if the land is not registered it must be in writing or by a declaration of trust in writing. Gifts intervivos must be complete for the same to be valid. In this regard it is not necessary for the donee to give express acceptance, and acceptance of a gift is presumed until or unless dissent or disclaimer is signified by the donee. (Emphasis added).”
39. In Odunga’s Digest on Civil Case Law and Procedure Volume III, Page 2417 at Paragraph 5484 it is stated as follows
- “Generally speaking the moment in time when the gift takes effect is dependent on the nature of the gift; the statutory provisions governing the steps taken by the donor to effectuate the gift. Equity will not come to the aid of volunteer and therefore, if a donee needs to get an order from a court of equity in order to complete his title, he will not get it. If, on the other hand, the donee has under his control everything necessary to constitute his title completely without any further assistance from the donor, the donee need no assistance from equity and the gift is complete. It is on that principle that in equity it held that a gift is complete as soon as the donor has done everything that the donor has to do that is to say as soon as the donee has within his control all those things necessary to enable him, complete his title. Where the donor has done all in his power according to the nature of the property given to vest the legal interest in the property in the donee, the gift will not fail even if something remains to be done by the donee or some third person. Likewise, a gift of registered land becomes effective upon execution and delivery of the transfer and cannot be recalled thereafter even though the donee has not yet been registered as a proprietor.” [Own emphasis]
40. The Respondent has not tendered any evidence to even suggest much less prove that the ‘alleged gift’ of Plot 203 to the 1st Protestor was ever initiated much less perfected by the Deceased during his lifetime.



41. There are no transfer forms duly signed by the Deceased, no request for Land Control Board Consent was ever made by the Deceased. All the court has is a search showing that as late as November 2021, Plot 203 was still registered to the Government of Kenya. No Title Document or Green Card for this parcel of land produced by either of the parties.
42. The Respondent claims that the 1st Protestor inherited the parcel of land known as Tetu/Kabage/141, which belonged to the Deceased.
43. As evidence of the claim the Respondent has annexed to his further supplementary affidavit dated 25th October 2023 a letter dated 24th March 2000 (Annexure 'RKW'). In that letter which was authored by the District Land Registrar - Nyeri and addressed to the Chief Land Registrar, it is stated that "Title Tetu/Kabage/141 in the name of Phillip Wachira Koigu, "was to be exchanged with Parcel Nos. 110, 203, 208 and 213 in Mweiga/Gakanga Section".
44. Therefore according to the Respondent this Plot 203 which was to have been registered in the name of the Deceased was later gifted by the Deceased during his lifetime to the 1st Protestor.
45. On his part the 1st protestor vehemently denies that Plot 203 was ever gifted to him by the Deceased. The 1st Protestor asserts that Plot 203 is his own property which he acquired in the years 1974/1975. That he was given the land by the Gakanga Land Exchange Committee where he served as a cook. The 1st protestor insists that this Plot 203 never at any time belonged to the Deceased. Whilst he admits that he does not have any Title document to Plot 203, the 1st Protestor produces as proof of his claim to ownership of the parcel of land of letter dated 2nd May 1990, which letter appears as Annexure 'KWK - 4' to the 1st protestors further Affidavit dated 29th September 2023.
46. The said letter which is addressed to the land Registrar and is authored by the District Officer confirms that Mweiga/Gakanga/203 belongs to Wachira Koigu and that there is no objection to his being issued with the Title to said parcel of land. That letter in no way confers 'title' or 'ownership' of Plot 203 to the 1st Protestor. It is merely a letter of 'no objection' to issuance of the Title.
47. The position, status and or ownership of Mweiga 203 is not very clear at all. On the one hand you have the 1st Protestor claiming that Mweiga/Gakanga/203 belongs to him and was never at any time owned by the Deceased. On the other hand you have the Respondent claiming that the said parcel of land initially belonged to the Deceased who in turn gifted it to the 1st Protestor during his lifetime, what is the correct position? This court is unable to tell.
48. I find that neither the 1st Protestor nor the Respondent has proved their allegations in respect of Mweiga/Gakanga/203. In order to determine the true ownership of this property the parties will have to seek a declaration from the Environment and Land Court, which is the only court mandated by Article 162(2) (b) of *the Constitution* of Kenya 2010 to determine issues relating to the ownership, use and occupation of land. This court sitting as a probate court has no jurisdiction to delve into those issues.
49. In RE Estate of Atibu Oronje Asioma (Deceased) [2022] KEHC Hon. Justice William Musyoka held as follows:-

“The Probate Court only distributed assets that were undisputedly owned by the Deceased. Assets that were encumbered or the subject of ownership disputes were not undisputedly owned by the Deceased and were not available for distribution by the court until the encumbrances were removed or the ownership disputes resolved. Property available for



distribution was deferred in section 3 of the *Law of Succession Act* as the free property of the Deceased.”

50. For the avoidance of doubt this court finds that the property known as LR Mweiga/Gakanga/203 was not registered in the name of the Deceased at the time of his death, nor was any evidence adduced to show that this parcel of land was ever registered in the name of the Deceased. Therefore Plot 203 does not form part of the estate of the Deceased and cannot be taken into account in distribution of the estate to the beneficiaries. Similarly I reject the claim by the Respondent that the 1st Protestor had been gifted a piece of land by the Deceased during his lifetime. The threshold for the application of Section 42 relating to gifts inter vivos has not been met. Based on this finding it is clear that the 1st Protestor being a genuine beneficiary was unjustifiably excluded from the distribution of the estate of the Deceased.

51. Regarding the 2nd Protestor, it is alleged and indeed the 2nd Protestor readily concedes that she signed the consent to confirmation of Grant.

In so doing the 2nd Protestor indicated her agreement to the mode of distribution proposed therein. However the 2nd Protestor now states that she did not understand the document she was signing or its implications.

52. The 2nd Protestor is an 87 year old lady. It would have been prudent to have the summons explained to her as well as the implications of the consent which she was signing. To the extent that this was not done her signature on the consent can be questioned.

53. In his evidence the Respondent admits that he made no allocation out of the estate to the daughters of the Deceased. The Respondent explains that he was merely following the wishes of his late father who distributed his land to his seven (7) sons only and not to the daughters. The Respondent also argues that the 2nd Respondent already has possession of 17 acres of land in Kieni West.

54. Firstly the fact that the 2nd Protestor may have seventeen (17) acres of land estate elsewhere does not exclude her from inheriting a share of her father’s estate.

55. In the Re Estate of M’ Iringo Kirigia (Deceased) [2017] eKLR the High Court stated that;-

“.....From his arguments, it is clear the objector is suggesting that the protestor is not entitled to a share of the Estate because she is a woman and more so a married woman. Such arguments are, to say the least are a worn out motion and do not have any place in modern day society. It is also vehemently frowned upon by *the constitution* of Kenya 2010 as well as the *Law of Succession Act*. See eminent literary work by W. M. Musyoka Law of Succession at Page 118 in relation to reference to children in the *Law of Succession Act* that;-

“Non discrimination of daughters Reference to children does not distinguish between sons and daughters, neither is there distinction between married and un married daughters.”[Own emphasis]

56. Similarly in Re Estate of Solomon Ngatia Kariuki (Deceased) [2008] eKLR Hon. Justice Makhandia (as he then was) rendered himself inter alia thus:-

“The *law of succession Act* does not discriminate between the female and male children or married or unmarried daughters of the Deceased person. When it comes to the children of the deceased are entitled stake a claim to the deceased’s estate. In seeking to disinherit the protestor under the guise that the protestor was married, her father, brothers and



sisters were invoking an old Kikuyu customary law. Like most other customary laws in this country they are always biased against women and indeed they tend to bar married daughters from inheriting their father's estate. The justification for this rather archaic and primitive customary law demand appears to be that such married daughters should forgo their father's inheritance because they are likely to enjoy inheritance of their husband's side of the family." [Own emphasis]

57. Finally on this point in *Re Estate of Elizabeth Wanjiku Munge (Deceased) 2015 eKLR* the court rendered itself as follows:-

"The provisions of Part V of the Act refer to "child" or "children". They make no distinction as between sons and daughters or male and female children. No distinction is made on their marital status. The effect of this is that the estate ought to be shared equally among all the children of the deceased without considering their gender or their marital status. It should be shared equally between the sons and daughters, where reference to daughters includes those that are married. This is the position so long as the deceased died after 1st July 1981 and the *Law of Succession Act* applied to the estate." [Own emphasis]

58. Article 27(3) of *the Constitution* of Kenya outlaws any form of discrimination on the basis of gender. Section 38 of the Law of Succession Act is clear on equal distribution of the net estate to all the surviving children of the Deceased. Likewise Section 38 of the same Act enshrines the principle of equal distribution of the net estate to the surviving children of the deceased irrespective of gender and whether married and comfortable in their marriage or unmarried. The law of succession Act provides that all children of the Deceased with the exception of those who have specifically waived their right to inheritance are entitled to a share of the estate. The Deceased did not leave any written will dictating that none of his daughters was to benefit from his estate.

59. I do note that DW2, DW3 both daughters of the Deceased as well as DW4 who is a granddaughter of the Deceased have stated in court that they have no interest in inheriting from the estate. That is all well and good and is in fact their right. No beneficiary can be compelled to partake of a share of the estate against their will.

60. However again it would have been prudent to have those who wish to waive their right to inherit do so in writing especially where like in the current case the estate is contested. In *Re Estate of Simon Ikandi Gitunga (Deceased) Succession Cause No. 5 of 1995*, the court stated that

"Concerning renunciation of right to inheritance, it should be noted that a beneficiary under a will or a survivor in intestacy cannot be compelled to take a share in the estate against their wish. In other words, it is not mandatory that a beneficiary take his bequest or legacy under the will of the deceased or that a survivor in intestacy takes the share allotted to them. In both cases, there is liberty to renounce or disclaim the right to the share. The usual practice is for such beneficiary or survivor or heir to file a Deed or instrument of renunciation disclaiming such right"

61. The protestors have complained that at no time did the family members hold a meeting to discuss and agree on the mode of distribution of the estate. Under cross-examination the Respondent admits that

"I did not call for a meeting of all the beneficiaries before I filed the summons for confirmation....."



62. One wonders then how the Respondent came up with a mode of distribution if he did not bother to discuss the issue with his siblings.

The appointment of the Respondent as an administrator did not bestow upon him the mandate to dictate terms to all the other beneficiaries.

As an administrator the duty of the Respondent was to act in the best interests of the estate and all the beneficiaries. How can the Respondent claim to be acting in the best interests of the beneficiaries when he has not even bothered to sit down with said beneficiaries to get their views on how the estate ought to be distributed.

63. The Respondent failed in his responsibility. To the extent that he failed to consult and take into account the views of the other beneficiaries regarding the distribution of the estate then the mode of distribution proposed therein cannot be upheld by the court.

64. It is common ground that the initial Grant which was confirmed on 3rd February 2012 was revoked. A look at the mode of distribution in that revoked grant reveals that it largely mirrors the mode of distributed proposed by the Respondent in this summons. Indeed under cross- examination the Respondent admits that

“The new mode of distribution is similar to the one in the revoked grant. I have not included Kanja as he had already inherited a parcel of land from the Deceased.”

65. It smacks of mischief not to mention being an abuse of court process for the Respondent to file a new summons containing a similar mode of distribution as that contained in a grant which had already been revoked by the court.

66. Finally I find merit in the two protests dated 17th April 2023 and 3rd October 2023. The mode of distribution proposed in the summons for confirmation of Grant is in my view discriminatory as some of the beneficiaries have been unjustifiably excluded. I therefore dismiss the summons for confirmation of Grant dated 1st March 2023 and make the following orders;-

- i. The Respondent/Administrator is directed to hold meetings with all the beneficiaries to enable them give input on the mode of distribution of the estate.
- ii. The Respondent to file within ninety (90) days a fresh summons for confirmation of grant to be considered by the court.
- iii. Any beneficiary who wishes to waive their right or interest in the estate of the Deceased to file a Deed of Renunciation in Court.
- iv. This being a family matter each side to bear their own costs.

DATED IN NYERI THIS 1ST DAY OF AUGUST 2025.

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MAUREEN A. ODERO

JUDGE

