



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT MURANG'A**

**SUCCESSION CAUSE NO 156 OF 2013**

**(FORMERLY NYERI HC SUCCESSION CAUSE NO 244 OF 2010)**

**IN THE MATTER OF THE ESTATE OF WANYOIKE MUCHOKI, DECEASED**

**MARY MUTHONI WANYOIKE, now deceased and**

**Substituted by ETHAN KAMAKIA)...ADMINISTRATOR/APPLICANT**

**VERSUS**

**JUANINA WANJIRU MUCHOKI.....PROTESTOR**

**J U D G M E N T**

1. A grant of letters of administration intestate herein was on 28/02/2011 made to **Mary Muthoni Wanyoike**, the Administrator/Applicant herein. She has since died and has been substituted by **Ethan Kamakia**). Before she died the Administrator had applied by **summons dated 30/08/2011** for confirmation of that grant. This judgement concerns that application. The cause was subsequently transferred from High Court, Nyeri to this Court.
2. At paragraph 2 of her supporting affidavit the Administrator listed the Deceased's survivors. The 9 names are in consonance with the names appearing at paragraph 4 of Form P & A 5 (the affidavit sworn in support of the petition for grant). They are also the same names appearing in the letter dated 03/12/2009 addressed to court by the Chief of Kamahuha Location, Makuyu in Murang'a County.
3. At paragraph 6 of the supporting affidavit the Administrator has proposed that the two parcels of land comprising the Deceased's estate be distributed as follows –  
  
**LR LOC 17/SABASABA/1777 - to Juanina Wanjiru Muchoki**  
  
**LR LOC 17/SABASABA/1778 - to Mary Muthoni Wanyoike**
4. On 07/10/2011 Juanina Wanjiru Muchoki (Protestor) filed an affidavit of protest. She claims for herself (and her household) the two parcels of land. She gives her reasons for this.
5. The Protestor filed a supplementary affidavit of protest on 22/11/2011 in which she exhibited the proceedings in **Murang'a SRMCC No 45 of 1994** in which she had sued the Deceased herein and others. Nothing turns on that case.
6. In her turn the Administrator filed an affidavit on 06/12/2011 in reply to the affidavits of protest. She disputed the Protestor's claim to both parcels of land.

7. By consent of the parties' advocates, the summons for confirmation was canvassed by way of written submissions. Those of the Administrator were filed on 27/03/2015 while the Protestor's submissions were filed on 08/06/2015. I have considered those submissions. I have also read all the affidavits sworn in support of and in protest to the summons for confirmation.

8. It is not in dispute that the **Deceased** herein, **Wanyoike Muchoki**, died intestate and that his estate comprises the two parcels of land already mentioned – LR LOC 17/SABASABA/1777 and 1778.

9. It is also not in dispute that the Deceased was a son of **Muchoki Wanyoike** who was the husband of the Protestor **Juanina Wanjiru Muchoki** and **Wacheke Muchoki** (long deceased, and the mother-in-law of the Administrator Mary Muthoni Wanyoike as she was the widow of a son of Wacheke Muchoki).

10. It is also not in dispute that the two parcels of land comprising the Deceased's estate were sub-divisions of a larger parcel of land, LR LOC 17/SABASABA/743, that had belonged to the Deceased's father already mentioned, **Muchoki Wanyoike**, and that the Deceased was registered proprietor of the same in trust for the entire family of Muchoki Wanyoike comprising his two wives Juanina Wanjiru Muchoki and Wacheke Muchoki. There was a third portion resulting from the sub-division, LR LOC17/SABASABA/1779 which was transferred to one Nyambura Thuo, a widow of a brother of the Deceased herein. The Protestor says that this transfer of parcel 1779 to the widow of the Deceased's brother was part of a scheme to ensure that the household of Wacheke Muchoki got more than its rightful share of the estate of Muchoki Wanyoike to the detriment of her household. She also mentions other properties allegedly sold/transferred by the Deceased which had belonged to Muchoki Wanyoike.

11. The Administrator denies these allegations by the Protestor. Her stand is that the original parcel LR LOC 17/SABASABA/743 was lawfully sub-divided into parcels Nos 1777, 1778 and 1779; that the Protestor was given parcel 1777 which covered the area of the land she was already using but that she declined to have it registered in her name; and that the Administrator's share was parcel 1778 while parcel 1779 went to a widow of a brother of the Deceased.

12. Now, the present proceedings are succession proceedings which are limited in nature and scope. The court here is really not concerned about the estate of the Deceased's father, **Muchoki Wanyoike**; the court is concerned with the estate of the Deceased herein, **Wanyoike Muchoki**, who was the registered proprietor of land parcels LR LOC 17/SABASABA/1777 and 1778. Those are the only assets that this court in these proceedings can lawfully distribute. It cannot lawfully purport to re-distribute the wider estate of the Deceased's father.

13. The Protestor's claims in that wider estate of the Deceased's father are obviously based on trust, and these present proceedings are so limited in scope and intent that the claims cannot be lawfully or properly be adjudicated here (without proper proceedings, etc., and ignoring other relevant laws, for instance, statutes of limitation). Those claims ought to be pursued elsewhere in more complete civil proceedings, something that the Protestor apparently set out to do in **Murang'a SRMCC No 45** of 1994 that appears to be still pending!

14. In these circumstances, I must reject the Protestor's proposals for distribution and endorse those of the Administrator. The grant of letters of administration herein is hereby confirmed. Distribution shall be as proposed at paragraph 6 of the supporting affidavit annexed to the summons dated 30/08/2011 for confirmation. It is so ordered. Parties shall bear their own costs of these proceedings.

**DATED AND SIGNED AT MURANG'A THIS 6<sup>TH</sup> DAY OF APRIL 2017**

**H P G WAWERU**

**JUDGE**

**DELIVERED AT MURANG'A THIS 7<sup>TH</sup> DAY OF APRIL 2017**