

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**SUCCESSION CAUSE NO. 3381 OF 2003**

**IN THE MATTER OF THE ESTATE OF PITY MUGURE KIHORO**  
**(DECEASED)**

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**JUDGMENT**

The deceased Pitty Mugure Kihoro died on 18th November 1991 at the age of 65 years. She was survived by 6 children namely:

- 1. Karige Kihoro**
- 2. Wamahiu Kihoro**
- 3. Wanyiri Kihoro**
- 4. Mwagiru Kihoro**
- 5. Jane Nyambura Kihoro**
- 6. Irene Waigumo Kihoro**
- 7. Nimarod Kihoro Wambugu**

At the time of death she had the following Properties:

- 1. Agutha/Gatitu/513**
- 2. Agutha/Gatitu/255**

The Petition for grant of letters of administration was filed by Jane Nyambura Kihoro on 7th October 2002. Grant of letters of administration was issued to Jane on 24th August 2004 and obtained Certificate of Confirmation dated 28th May 2005. Both

grant and certificate of confirmation were challenged by Wanyiri Kihoro. By Judgment dated 28th November 2019, Muchelule J (as he then was) revoked the Grant and Certificate of confirmation. A fresh grant was issued to:

**1. Jane Nyambura Kihoro**

**2. Wanyiri Kihoro.**

The 1st Administrator filed summons for confirmation of grant dated 19th December 2019. In her affidavit of support, she identified the beneficiaries as follows:

**1. THAT some of the following are the survivors of the deceased:**

- (a) Karige Kihoro**
- (b) Wamahiu Kihoro**
- (c) Irene Waigumo Kihoro**

**2. THAT the other five survivors of the deceased have since died namely:**

- a) Margaret Wairimu**
- b) Macharia Kihoro**
- c) Wamahiu Kihoro**
- d) Lucy Wangari**
- e) Mwagiru Kihoro**

She filed her proposed mode of distribution as hereunder:

<b>NAME</b>	<b>DESCRIPTION OF PROPERTIES</b>	<b>SHARE OF HEIRS</b>
IRENE WAIGUMO KIHORO	<b>L.R. No. Agutha/Gatitu/255</b>	Whole

JANE NYAMBURA KIHORO	<b>L.R. No. Agutha/Gatitu/1494</b>	2.9 Acre
IRENE WAIGUMO KIHORO		1.3 Acre

Wanyiri Kihoro the 2nd Administrator filed a counter Summons dated 16<sup>th</sup> December 2019. In his affidavit in support he does not make his preferred mode of distribution. This affidavit is therefore treated as an affidavit of protest to the Summons for Confirmation filed by Jane on 19th.

By directions of the court the Summons for Confirmation was canvassed by way of viva voce evidence. Jane Nyambura Kihoro testified that deceased was her mother. She he had nine children:

- 1. Margaret Wairimu**
- 2. Jane Nyambura Kihoro**
- 3. Karige Kihoro**
- 4. Wanyiri Kihoro**
- 5. Irene Waigumo Kihoro**
- 6. Macharia Kihoro**
- 7. Wamahiu Kihoro**
- 8. Lucy Wangari**
- 9. Mwagiru Kihoro**

Deceased at the date of death had two properties;

- 1. Agutha/Gatitu/255 measuring 1.6 Acres.**
- 2. Agutha/Gatitu/1494 measuring 4.2 Acres.**

During the lifetime of the father, the five brothers received four acres from him. She stated that Agutha/Gatitu/1494 was given to their mother Pitty to share among the daughters:

**1. Margaret Wairimu**

**2. Jane Nyambura**

**3. Irine Wairimu**

**4. Wangari Mbugua**

2 of the sisters namely:

a) **Margaret Wairimu**

b) **Lucy Wangari**

Got married and gave up their share to her and Irine Waigumo Kihoro she has therefore distributed the estate as follows:

<b>NAME</b>	<b>DESCRIPTION OF PROPERTIES</b>	<b>SHARE OF HEIRS</b>
IRENE WAIGUMO KIHORO	<b>L.R. No. Agutha/Gatitu/255</b>	Whole
JANE NYAMBURA KIHORO	<b>L.R. No. Agutha/Gatitu/1494</b>	2.9 Acre
IRENE WAIGUMO KIHORO		1.3 Acre

Her preferred mode of distribution is supported by:

**1. Dennis Kariuki son of Irine Wairimu (deceased)**

**2. Muchiri Karige**

**3. Martin Maina**

**4. Carolyn Nyambura**

## **5. Machire Muluvi**

Wanyiri Kihoro the objector gave evidence. He testified that the deceased was his mother. She died in 1981 and had five children. At the time of her death she had 2 properties:

### **1. Agutha/Gatitu/255**

### **2. Agutha/Gatitu/1494 registered jointly with her 4 sons:**

- 1. Wanyiri Kihoro**
- 2. Michire Kihara**
- 3. Wamahi Kihoro**
- 4. Mwagiru Kihoro**

When the deceased died in 199, her interest in Agutha/Gatitu/1494 was extinguished by operation of Andrew as it was a jointly owned property. He testified Agutha/ Gatitu/255 was in the name of deceased as at time of death. He suggest that parcel Agutha/Gatitu/... should be given to the children of Irine who is deceased. He proposes that the same be given to Dixon Kariuki Waigumo.

From the pleadings, evidence and Submissions, it is not disputed that the deceased Pitty Mugure Kihoro died in November 1981 as evidenced by certificate of death annexed to the petition. The deceased had total of 9 children namely;

### **1. Margaret Wairimu**

- 2. Jane Nyambura Kihoro**
- 3. Karige Kihoro**
- 4. Wanyiri Kihoro**
- 5. Irene Waigumo Kihoro**
- 6. Macharia Kihoro**
- 7. Wamahu Kihoro**
- 8. Lucy Wangari**
- 9. Mwagiru Kihoro**

At the time of death the deceased had the following assets registered in her name;

- 1. Agutha/Gatitu/1494**
- 2. Agutha/Gatitu/255**

In Agutha/Gatitu/1494 is a Parcel. The five sons had each a share of 4 acres and 4.2 Acres was held by Pitty in trust for her four daughters:

- 1. Margaret Wairimu Kihoro**
- 2. Jane Nyambura Kihoro**
- 3. Irine Waigumo Kihoro**
- 4. Lucy Wangari**

Mr Wanyiri Kihoro the Objector confirms that the Parcel of land Agutha/Gatitu/1494 was both in name of deceased Pitty and four sons:

- 1. Wanyiri Kihoro**
- 2. Macharia Kihoro**
- 3. Wamahi Kihoro**
- 4. Mwagiru Kihoro**

He confirms that each of the sons received their share. He stated that it is not true that the share by deceased was held in trust for the daughters. He however admits and supports Irine Waigumo Kihoro who is deceased and represented by Dennis Kariuki Waigumo should be given the property Agutha/Gatitu/255. He however does not make any provision for the 1st administrator Jane Nyambura Kihoro. The 1st administrator Jane Nyambura has filed her preferred mode of distribution as hereunder:

<b>NAME</b>	<b>DESCRIPTION OF PROPERTIES</b>	<b>SHARE OF HEIRS</b>
IRENE WAIGUMO KIHORO	<b>L.R. No. Agutha/Gatitu/255</b>	Whole
JANE NYAMBURA KIHORO	<b>L.R. No. Agutha/Gatitu/1494</b>	2.9 Acre
IRENE WAIGUMO KIHORO		1.3 Acre

**Dated at Nairobi this 19<sup>TH</sup> day of MARCH, 2026.**

**S. N. RIECHI  
JUDGE**