

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NYERI

HIGH COURT SUCCESSION CAUSE NO. 284 OF 1996

IN THE MATTER OF THE ESTATE OF SAMUEL WAHOME

GATHERU (DECEASED)

WACHIURI WAHOME.....PROTESTOR

JUDGEMENT

1. Before this court for determination is the Affidavit of Protest to confirmation of Grant dated **12th June 2023** filed by **WACHIURI WAHOME** (hereinafter the Protestor).

BACKGROUND

2. This succession cause relates to the estate of the late **SAMUEL WAHOME GATHERU** who died intestate on **1st January 1994**. A copy of the Death Certificate Serial No. **295287** is in the Court file. The Deceased was survived by a widow **REBECCA MUTHONI** (who later passed away on **20th July 2008**) and ten (10) children. One of the sons of the Deceased **JOHN NDURA WAHOME** also passed away on leaving behind no family.

3. In the Petition for Grant of letters of administration Intestate the estate of the Deceased was said to comprise of the following assets;-

- (i) Property known as LR KIRIMUKUYU/KIRIA/17- 9.7 Acres
- (ii) Property known as LR KIRIMUKUYU/KIRIA/68- 1.4 Acres
- (iii) Property known as LR KAGARI/KANJA/1863 - 7.0 Acres
- (iv) Property known as LR GATHURI/GITHIMU/1583 - 0.15 Hectares (40 x 80)
- (v) Plot No. 1 NGURUMO

4. Following the demise of the Deceased Grant of Letters of Administration were on **20th December 2022** issued to the widow **Rebecca Muthoni Wahome**. After the demise of the said widow the Grant was issued jointly to **FESTUS GATHERU WAHOME, GLADYS WANGUI WAHOME and WACHIURI WAHOME**. There has been protracted litigation over this estate. Indeed during the hearing some of the beneficiaries expressed frustration over the fact that this matter remains unconcluded almost thirty (30) years after the death of the Deceased.

5. On **13th January 2023** the Respondents herein filed a Summons for Confirmation of Grant seeking that the Grant issued to them be confirmed. They proposed that the net estate be distributed in the following manner;-

SCHEDULE OF DISTRIBUTION OF ASSETS

	DESCRIPTION OF PROPERTY	NAME OF HEIR	SHARE (Acres)
1	KIRIMUKUYU/KIRIA/ 17	FESTUS GATHERU WAHOME ALICE WANJIRA WAHOME, WACHIURI WAHOME, JACKSON KINYORI WAHOME, REGINA WANJA WAHOME, GLADYS WANGUI WAHOME, JOHN NDURA WAHOME, SAMUEL WAHOME WAITHIEGENI	1.14 1.14 1.14 1.14 1.14 1.14 1.14 1.14
		PATRICK MBOGO WAHOME	0.61
2	KIRIMUKUYU/KIRIA/ 68	PATRICK MBOGO WAHOME	Whole Share
3	KAGAARI/KANJA/ 1863	FESTUS GATHERU WAHOME, ALICE WANJIRA NJOROGE, WACHIURI WAHOME, JACKSON KINYORI WAHOME, REGINA WANJA WAHOME, GLADYS WANGUI WAHOME, JOHN NDURA WAHOME, SAMUEL WAHOME WAITHIEGENI	0.88 0.88 0.88 0.88 0.88 0.88 0.88 0.88
4	GATURI/GITHIMU/ 1583	FESTUS GATHERU WAHOME ALICE WANJIRA NJOROGE	

.			WACHIURI WAHOME JACKSON KINYORI WAHOME REGINA WANJA WAHOME GLADYS WANGUI WAHOME JOHN NDURA WAHOME PATRICK MBOGO WAHOME SAMUEL WAHOME WAITHIEGENI	Equal Share
5	PLOT NGURUMO	NO.1	PATRICK WAHOME MBOGO	Whole Share
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6. The Protestor who himself is one of the administrators of the estate filed in response this Affidavit of Protest. The matter was referred to Court Annexed Mediation (**CAM**) but no settlement was reached thus the dispute was set down for hearing.
7. The matter was heard by way of oral evidence. The Protestor called two (2) witnesses whilst the Respondents also called two (2) witnesses.

THE EVIDENCE

8. The Protestor **Wachiuri Wahome** told the Court that he was a son to the Deceased, a beneficiary to the estate and also an Administrator of the same. The Protestor stated that he was not involved in the preparation of the Summons for Confirmation of Grant and states that he opposes the proposed

mode of distribution of the estate contained in **Paragraph 5** of that Summons.

9. The Protestor avers that some of the assets belonging to the Deceased have been omitted from the Summons namely the property known as **KIRIMUKUYU/KIRIA/17** where the Deceased had set up his homestead. The Protestor seeks to rely on a Valuation Report filed on **Succession Cause 490 of 2009** Estate of **Rebecca Muthoni Wahome** (Late Widow of the Deceased).

10. Further the Protestor contends that Plot No. **Gathuri/Gitumu/1583** does not form part of the estate of the Deceased. That the said plot in fact forms part of the estate of their late mother **Rebecca Muthoni Wahome**. That **Plot No. 2 Ngurumo Village** which the Deceased purchased from one **Philip Machira** has been omitted from the list of assets to be distributed. That the mode of distribution has also left out certain personal and household items which belonged to the Deceased i.e wardrobes, sofasets, tables, cupboards, farming tools, sewing machine

etc which the Protestor accuses his brother **Patrick Mbogo** of having illegally bequeathed to himself.

11. Finally the Protestor accuses his two (2) co-administrators of having

illegally intermeddled with the estate by concealing assets which they have secretly bequeathed to themselves. The Protestor sets out in his annexures an alternative mode of distribution of the estate as follows;-

1.	Kirimukuyu/Kiria/17	Kagaari/Kanja/1863		
	Kirimukuyu/Kiria/68			
	Festus Gatheru Wahome	1.3275 acres	1.575	-
	Wachiuri Wahome	1.375 acres	1.575	-
	Jackson Kinyori Wahome	1.3275 acres	1.575	-
	Patrick Mbogo Wahome	1.2475 acres	0.175	1.40
	Samuel Wahome Waithiegeni	1.3275 acres	1.575	-
	Alice Wanjira Njoroge			
	Regina Wanja Wahome	2.9425 acres	0.525	
	Gladys Wangui Wahome			
	Access road	0.20 acres	-	-

2. The homestead and personal and household effects therein go to

Alice Wanjira Njoroge, Regina Wanja and Gladys Wangui as part of

the 2.5 acres.

3. Layout on the ground be guided by the resolutions of elders at the

meeting convened by the chief on 22/7/2013.

4. Plot No. 1 be sold to meet administration expenses.

Proceeds of

sale to be deposited in a bank account to be operated jointly by

the three Administrators. Any balance to be shared equally among

all beneficiaries.

12. **PW2 JACKSON KINYORI WAHOME** is also a son to the Deceased

and a beneficiary to the estate. He states that he opposes the mode of

distribution as set out in the Summons for Confirmation of Grant and

states that he supports the Affidavit Protest dated **12th June 2023**.

13. **DW1 FESTUS GATHERU** testified on behalf of the Respondents.

DW1 confirmed that Grant of letters of administration was on **20th**

December 2022 issued to himself, the Protestor and **Gladys**

Wangui. The witness prays that the court now proceed to confirm

the grant so that distribution of the estate may proceed.

14. **DW1** denied the allegation that some of the Deceased's properties

had not been included in the summons for Confirmation of Grant and

denied the allegation of intermeddling with the estate.

15. **DW2 PATRICK MBOGO WAHOME** a son of the Deceased and a

beneficiary to the estate supported the summons for confirmation of

the grant. Both **DW1** and **DW2** expressed great frustration due to

the fact that over **thirty (30) years** since the demise of their father,

the estate was yet to be distributed. They blamed the Protestor for

causing delay by filing numerous applications thereby keeping the

family in litigation over the matter.

16. Upon closure of oral evidence parties were invited to file and exchange

written submissions. The Protestor filed written submissions which

were undated whilst the Respondents relied upon the written submissions dated **2nd February 2026**.

ANALYSIS AND DETERMINATION

17. I have carefully considered the Summons for Confirmation of Grant

dated **13th January 2023**, the Affidavit of Protest dated **12th June**

2023 the evidence adduced in court as well as the written submissions filed by the parties.

18. It is common ground that the Deceased in this matter passed away on

1st January 1994. The parties are in agreement that the initial grant

was issued to the widow **Rebecca Muthoni Wahome** and that

following her demise on **20th July 2008** a grant was issued jointly to

the Protestor and the two Respondents. Similarly there exists no

dispute regarding the names and identities of the beneficiaries to the

estate. However the Protestor does challenge the extent of the estate

as set out in the summons for confirmation.

19. At the outset it is important to set it straight that this succession cause

No. **284 of 1996** relates to the estate of **Samuel Wahome Gatheru**.

This cause is not concerned with the estate of his widow **Rebecca**

Muthoni Wahome and the court will not allow any attempt to

intermingle the two estates. Each cause is independent of the other.

20. The Protestor has alleged that his co-administrators have deliberately

omitted some of the assets owned by the Deceased. In paragraph (5)

of his protest the Protestor makes reference to certain permanent and

non-permanent free assets which existed in the family home namely

Kirimukuyu/Kiria/17.

21. I note that the said parcel of land has been included in the summons

for confirmation as one of the assets available for distribution. The

Protestor makes reference to certain household goods including sofa

sets, tables, cupboards, farming tool etc which he claims were not

included in the assets to be distributed. This is indeed laughable and

in my view is a frivolous submission.

22. Firstly the personal and household goods left in the family home would

ordinarily have gone to the widow of the Deceased, who all the

parties concede was still living when the deceased met his death. This

would be in line with the provisions of **Section 35 (1) (a)** of the Law

of Succession Act which vests in the surviving spouse **absolutely** all the

personal and household effects of the Deceased. Thus these sofa sets,

jembes, wheelbarrows, clothes and other such items do not form part

of the estate of the Deceased. If the Protestor has a burning desire

to inherit said items then he would need to follow up the issue in

Succession Cause No. 4 of 2009 Estate of **Rebecca Muthoni**

Wahome.

23. Secondly the Deceased died in the year **1994** over **thirty (30)** years

ago. It is highly unlikely that these personal items still exist and are

usable today. This is clearly a mischievous claim put in by the Protestor

to waste the Court's time. On the off chance that the items still exist

and are usable the Protestor may as I have stated earlier pursue them

in **Succession No. 49 of 2008.**

24. The Protestor has annexed a valuation report in respect of **LR**

KIRIMUKUYU/KIRIA/17 (Annexure '**WW1**' to the Protest).

The

valuation report dated **17th March 2010** was prepared by

Mwai

Githiomi Associates and was filed in **Succession 490 of 2008.**

As I have clearly stated **succession 490 of 2008** relates to a totally

different estate. The Protestor is making the mistake of treating the

estates of his two parents as one cause. That is not the case. Each is

a separate and distinct cause. In my view this valuation report has no bearing on the distribution of the assets herein. The courts role is only to determine how the particular asset should be distributed, not their value.

25. The Protestor has accused his co-administrators of intermeddling with the estate and of concealing assets which they have secretly bequeathed to themselves. The Protestor did not give details of these assets which the co-administrators had bequeathed to themselves.

26. The Protestor cites the property known as **LR Gaturu/Githumu/1583** which he asserts does not belong to this estate but rather belongs to the estate of his late mother vide succession No. **490 of**

2008. I was not able to trace the Title document for this particular

parcel in this file. However a perusal of **succession cause No. 490**

of 2008 revealed a search certificate dated **20th April 2009** which

indicated that Title **Gaturu/Githimu/1583** is registered in the name

of **Rebecca Muthoni Wahome.** A copy of the title document for

Gaturu/Githimu/1583 which is also in the same file shows that the said parcel of land was on **5th June 1972** registered in the

name of **Rebecca Muthoni Wahome.** There is no evidence of any

change in proprietorship of this parcel of land.

27. The protestor referred to the judgment of **Hon. Lady Justice Mary**

Kasango (Retired) dated **7th July 2008.** I have carefully

perused that judgment. In the said judgment the Honourable judge indicated that LR No. **Gaturi/Githimu 1583** was in fact registered in the name of then Administrator of the estate one **Rebecca Muthoni Wahome**. Indeed I note that in **Succession Cause No. 490/2008** this parcel of land **Gaturi/Githimu 1583** is included as one of the assets owned by the Deceased **Rebecca Muthoni Wahome**. The same property cannot be an asset in two different estates.

28. I therefore find and hold that this parcel of land did not belong to the

Deceased and therefore is not available for distribution under this

cause. The same may be dealt with in **Succession Cause No. 490 of 2008**.

29. At **paragraph 15** of the Affidavit of Protest the Protestor states that

the Respondents have failed to take into account **Plot No. 2** in

Ngurumo village which he claims that the Deceased purchased from

one Phillip Machira and gave to **Festus Gatheru** (a beneficiary). The

protestor asserts that this **Plot No. 2** forms part of the estate of the

Deceased yet the same has not been included in the Summons for

confirmation.

30. Having perused the voluminous documents in this file I do note that

there exist two plots in Ngurumo being **Plot No. 1** and **Plot No. 2**.

The Protestors complaint relates to **Plot No. 2** which he claimed initially

belonged to the Deceased but was later transferred to **'Festus**

Gatheru'. The Protestor has not adduced any evidence to show that

Plot No. 2 Ngurumo was initially registered in the name of the

Deceased and was later transferred to **Festus Gatheru**.

31. Annexed to the Affidavit of **Rebecca Muthoni Wahome** dated **2nd**

May 2001 is a Plot Search Certificate (Annexure **RMW '4'**) dated **19th**

April 2001 which certificate indicates that **Plot No. 2** Ngurumo Market

is registered in the name of **Gatheru Wahome** (the 1st Respondent

herein). There is nothing to show that, the position has changed.

There is no evidence that **Plot No. 2** ever at any time belonged to the

Deceased. I therefore find and hold that **Plot No. 2** Ngurumo Market

belongs to **Festus Gatheru Wahome** and as such **does not** form part

of the estate of the Deceased.

32. Regarding **Plot No. 1 Ngurumo** a Plot search Certificate dated

11th January 1996 indicates that the same is registered in the name

of **Samuel Wahome** (the Deceased herein). I therefore find and hold

that Plot No. 1 Ngurumo does form part of the estate of the Deceased

and is available for distribution.

33. To conclude on the question of **Plot No. 1 DW1** testified that the family

agreed to sell this plot for **Kshs. 40,000** in order to raise funds to cater

for the costs of this succession cause. **DW2 Patrick Mbogo** indicated

his desire to purchase the said plot. The Protessor under cross-

examination concedes that the parties did agree to sell Plot No. 1

although he denies that the plot was ever sold. The Protestor states

that

“We held a family meeting on 17/9/2000 to discuss the distribution of the estate. My late mother chaired the meeting. We agreed that Plot No. 1 would be sold to meet the costs of administration. The plot was never sold.....”

34. The Protestor goes on to concede that the family agreed that priority

would be given to a beneficiary of the estate to purchase the plot and

that **Patrick Mbogo** expressed his desire to purchase **Plot No. 1**. In

the affidavit dated **1st August 2024** sworn by **Maina Karingithi**

Advocate, who was representing the then Administrator of the estate.

It is averred that Patrick Mbogo did indeed pay to the lawyer **Kshs.**

40,000/= and was issued with a receipt. In the circumstances I do

find that the allocation of **Plot No. 1** to **Patrick Mbogo** is fair and just

as it conforms with the family agreement.

35. The remaining properties **Kirimukuyu/Kiria/17, Kagaari/Kanja/**

1863 and **Kirimukuyu/Kiria/68** all belonged to the Deceased as is

evidenced by the copies of the Green cards which are annexed to the

initial petition which is dated **15th October 1996**. These documents

show that the properties in question were all registered in the name of

the Deceased **Samuel Wahome Gatheru**. The same all form part of

the estate of the Deceased and are available for distribution.

36. The Protestor has accused the Respondents of intermeddling with the

estate. The Protestor has not produced before the court any evidence

of this alleged intermeddling by the Respondents. Given that the

Protestor under cross-examination admitted to having sold a portion of

the property known as **Kagaari/Kanja/1863** to one **Ndwiga Njiru**

for which he has already been paid a sum of **Kshs. 750,000**, this

particular allegation is a case of the pot calling the kettle black. It was

the protestor himself who intermeddled with the estate by purporting

to sell off estate property to a third party. This sale was done without the consent of the other beneficiaries and was

before the

Grant had been confirmed.

37. As an Administrator the Protestor is a trustee of the estate.

He had no

right to purport to sell off a portion of the estate. **Section 45**
of the

Law of succession Act makes any form of intermeddling a
criminal

offence. **Section 82 (b) (ii)** of the Law of Succession Act
provides that

**“No immovable property shall be sold before
confirmation of
the grant”**

The purported sale by the Protector **before** confirmation of
the Grants

amounts to intermeddling and is null and void.

38. The purported sale to the said by the Protector of a portion
of estate

land was illegal under the terms of **Section 45** of the Act.
The so

called purchaser **is not** a beneficiary to the estate and has
no locus

standi in this matter.

39. In **RE ESTATE OF JOHN GAKUNGA NJOROGE [2015] eKLR**
the

Court stated as follows:-

“For the transaction between the applicants and the beneficiaries of the estate of the deceased entered into before the Grant of Letters of Administration to them and before the confirmed Grant, the contracts of sale are invalid for offending the provisions of sections 45 and 82 of the Law of Succession Act. Even if the sale transactions were by the administrators the dealings with immovable property of the estate is restricted by the provisions of the powers and duties of the personal representative under Section 82(b) proviso (ii) which provides that “no immovable property shall be sold before confirmation of the grant.” [Own emphasis]

40. I have looked at and compared the mode of distribution as proposed

by the Respondents and by the Protestor. I note that the Protestor

does not appear sure of how he wants the estate to be distributed. In

his Protest he sets out one mode of distribution yet in his written

submissions the Protestor proposes that a different mode of distribution

be adopted. In my view the proposal put forward by the Respondents

is fair just and all inclusive.

41. Finally this Protest is only partially successful specifically in respect of

parcel of land known as **Gaturi/Githimu/1583** which this court has

found belonged to the widow **Rebecca Muthoni Wahome**.

42. In conclusion the court makes the following orders

(1) The property known as **LR GATURI/GITHIMU/1583** does not form part of the estate and is not available for distribution

under this cause.

(2) The Grant of letters of Administration Intestate made to

FESTUS

GATHERU WAHOME, WACHIURI WAHOME and

GLADYS

WANGUI WAHOME on 20th December 2022 be and is

hereby

confirmed.

(3) The estate of the Deceased **SAMUEL WAHOME**

GATHERU is to

be distributed as follows;-

	DESCRIPTION OF PROPERTY	NAME OF HEIR	SHARE (Acres)
1.	KIRIMUKUYU/KIRIA/17	FESTUS GATHERU WAHOME, ALICE WANJIRA WAHOME, WACHIURI WAHOME, JACKSON KINYORI WAHOME, REGINA WANJA WAHOME, GLADYS WANGUI WAHOME, JOHN NDURA WAHOME, SAMUEL WAHOME WAITHIEGENI	1.14 1.14 1.14 1.14 1.14 1.14 1.14 1.14
		PATRICK MBOGO WAHOME	0.61
2.	KIRIMUKUYU/KIRIA/68	PATRICK MBOGO WAHOME	Whole

			Share
3.	KAGAARI/KANJA/1863	FESTUS GATHERU WAHOME, ALICE WANJIRA NJOROGE, WACHIURI WAHOME, JACKSON KINYORI WAHOME, REGINA WANJA WAHOME, GLADYS WANGUI WAHOME, JOHN NDURA WAHOME, SAMUEL WAHOME WAITHIEGENI	0.88 0.88 0.88 0.88 0.88 0.88 0.88
4.	PLOT NO NGURUMO	1 PATRICK WAHOME MBOGO	Whole Share

(4) This being a family matter each party to meet their own costs.

43. **FINALLY** as a foot note the court notes that this matter has been under active litigation in the courts for over **thirty (30) years**. It is a discouraging trend that families are willing to spend years and decades squabbling over wealth left behind by their parents. The result is that family unity is affected, the families are left divided and this affects their children and grandchildren. I have no doubt that these never-ending court battles and the disunity in the family would greatly grieve the parents who did not anticipate this outcome as

they worked so tirelessly to acquire the wealth which their children are now fighting over.

44. It is time to stop fighting and to let the parents rest in peace. Put away the daggers, let parties put aside their egos and act in unison to distribute the estate and hopefully to some degree family unity may be restored.

Dated in Nyeri this 8th day of May 2026

.....
MAUREEN A. ODERO
JUDGE