



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**MILIMANI LAW COURTS**

**FAMILY DIVISION**

**SUCCESSION CAUSE NO. 2096 OF 1999**

**IN THE MATTER OF THE ESTATE OF HENRY NJAU NGOTHO (DECEASED)**

**MARGARET NGOIRI NGOTHO.....APPLICANT**

**VERSUS**

**JOYCE NJERI NJAU.....ADMINISTRATOR/RESPONDENT**

**RULING**

1. The deceased Henry Njau Ngoto died intestate on 7<sup>th</sup> May 1997. He left several parcels of land, including Kabete/Nyathuna/313 measuring 1.84 hectares. His widow Joyce Njeri Njau (the respondent) petitioned the court for the grant of letters of administration intestate. The grant was issued to her on 29<sup>th</sup> July 1997, and confirmed on 26<sup>th</sup> July 2016. Her and her children with the deceased were the beneficiaries of the estate. The estate was distributed to them. This parcel went to her absolutely.
2. The applicant Margaret Ngoiri Ngoto is sister to the deceased. The other sister is Rachael Kabura Mukuria. The applicant's case is that this parcel of land was in 1958 registered in the name of the deceased following consolidation and adjudication for him to hold it in trust for himself and the rest of the family, including the two. Otherwise the land belonged to their father, the late Gerald Ngoto Njau. The deceased was the only son and that was why he was registered, in accordance with Kikuyu customary law.
3. The applicant swore that she got married but that marriage broke in 1965. She returned to live on this land, as was always the case, together with her children. She put up her home here, and when the deceased died she was living on the land. She stated that the respondent had petitioned for a grant and had the deceased's estate without disclosing that she and her sister existed, and that she was residing on this parcel. She claimed she had a beneficial interest on the land which she had been disinherited of. It is for these reasons that she sought the revocation of the grant as confirmed, and for the court to determine her beneficial interest in the land and to allocate that interest to her.
4. The respondent's response was that the parcel was registered in the name of the deceased in absolute terms, and that she, being the widow, had through the succession proceedings inherited the same. She denied that the deceased had been registered to hold the land in trust for the applicant, or for any other person.
5. Ideally, under **section 51(2)(g)** of the **Law of Succession Act (Cap. 160)** the petition filed by the respondent for the grant of letters of administration intestate should have indicated the names and addresses of the sisters of the deceased, who included the applicant. The applicant ought to have been made aware that a grant in respect of the deceased was being sought. That was not done. It follows that the proceedings leading to the grant were defective in substance, and that the respondent was guilty of non-disclosure.
6. However, the applicant's case is not that she was a beneficiary or dependant of the estate of the deceased. Her case was that the deceased had been registered in respect of Kabete/Nyathuna/313 as a trustee, and not as an absolute owner; that the deceased was holding the piece of land in a fiduciary capacity on behalf of the applicant and others. In other words, the applicant is laying claim to this piece of land against the deceased who was the registered proprietor. The basis of the claim is a Kikuyu customary law trust. The case of **Mbui Mukangu –v- Gerald Mutwiri Mbui, Court of Appeal at Nyeri Civil Appeal No. 281 of 2000** was cited in support of the claim.
7. It is my considered view that, because the applicant is claiming part of this land on the basis that the deceased held it in trust for her, the dispute is beyond the jurisdiction of this court. The claim belongs to the Environment and Land Court under **Article 162(2)(b)** of the Constitution and **section 13** of the **Environment and Land Court Act**.
8. It is for want of jurisdiction that I dismiss the applicant's application dated 26<sup>th</sup> July 2016. I make no orders as to costs.

**DATED and DELIVERED at NAIROBI this 28<sup>TH</sup> day of JANUARY 2020**

**A.O. MUCHELULE**

**JUDGE**