



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

FAMILY DIVISION

SUCCESSION CAUSE NO. 606 OF 2010

IN THE MATTER OF THE ESTATE OF KARIUKI KAMINGIRAI alias JULIUS KARIUKI KAMINGIRAI (DECEASED)

JANE MUTHONI KIHOTO.....1ST APPLICANT

WINNIE NJERI KARIUKI.....2ND APPLICANT

VERSES

FRANCIS NDUNGU KARIUKI.....RESPONDENT

RULING

1. The deceased Kariuki Kamingirai alias Julius Kariuki Kamingirai died intestate on 15th April 2001. He was survived by the respondent Francis Ndungu Kariuki. His other son Geoffrey Kihoto Kariuki had pre-deceased him. The respondent petitioned the Senior Principal Magistrate's Court in **Succession Cause No. 24 of 2009** and was issued with a grant on 9th March 2009. The estate comprised land parcel Kiambu/Gatuanyaga/852. The parcel was shared during the confirmation of the grant as follows:-

- (a) the respondent – 2 acres;
- (b) Julius Kariuki – 1 acre; and
- (c) Edwin Kinyanjui 1 acre.

2. The applicants Jane Muthoni Kihoto and Winnie Njeri Kariuki were the widow and daughter, respectively, of the late Geoffrey Kihoto Kariuki. The 1st applicant and Geoffrey Kihoto Kariuki had other children. The applicants filed an application dated 29th March 2010 for the revocation of the grant on the ground that the respondent had deliberately and fraudulently disinherited them by excluding them from the petition, the grant and the distribution of the deceased's estate when he knew that they were beneficiaries to the estate. The respondent defended the application which was heard and determined that indeed he had excluded them, and disinherited them. The grant to the respondent as confirmed was revoked. There was an order that the 1st applicant and her children be included as beneficiaries, and that that estate be shared a fresh. It was indicated that the respondent would continue being the administrator.

3. In the present application dated 20th April 2019 the applicants sought to be appointed as co-administrators of the estate of the deceased as the respondent had failed to proceed to have the estate shared.

4. The respondent's response was that following the confirmation of the grant, he had distributed the estate and was consequently left with only 2 acres whose new title was Kiambu/Gatuanyaga/5838. Subsequent to the revocation of the grant he had on 2nd April 2018 filed summons for the confirmation of the grant in which he had proposed that he gets 1 acre and that the 1st applicant and her co-wife Pauline Wairimu Kihoto do get ½ acre each. The application was pending, and indeed on 11th May 2018 the applicants had opposed that distribution. The applicant had proposed that the estate comprising four acres in Kiambu/Gatuanyaga/852 should be shared into two equal parts, so that the respondent gets 2 acres and the estate of Geoffrey Kihoto Kariuki gets 2 acres. She stated that the said co-wife had never participated in the proceedings and had not indicated that she was a beneficiary of the estate of the deceased.

5. The respondent did, following the confirmation of the grant, transfer to his son Julius Kariuki Ndungu a portion of the estate; had transferred a portion to John Kairuki Gatheca; and transferred 0.0404 Ha to his other son Edwin Kinyanjui Ndungu. This is why he has only 2 acres left.

6. It will be interesting to know whether these 3rd parties were beneficiaries and/or creditors to the estate of the deceased.

7. It will also be determined whether the transfers were lawful and legitimate, following the revocation of the confirmation of the grant which meant that the distribution had been cancelled.

8. To allow for these issues to be resolved, I allow the application and direct that the 1st applicant Jane Muthoni Kihoto shall be the co-administrator of the estate of the deceased Kariuki Kamingirai alias Julius Kariuki Kamingirai. The application dated 24th April 2018 and filed on 25th April 2018 for the confirmation and the affidavit of protest by the applicants dated 30th May 2019 shall be served on the 3rd parties who shared in the estate of the deceased for each to have 21 days to respond to the same. The respondent and the applicants shall have upon service respond to the 3rd parties in replying affidavits. The matter shall be mentioned on **27th April 2020** to take a hearing date. The respondent shall return to court for cancellation of the grant that was issued to him alone following the order of revocation.

9. Costs of this application shall be borne by the respondent.

DATED and DELIVERED electronically, following consent of the parties, at NAIROBI this 30TH day of APRIL 2020.

A.O. MUCHELULE

JUDGE