



**REPUBLIC OF KENYA**

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

**SUCCESSION CASE NO. 497 OF 2007**

**IN THE MATTER OF THE ESTATE OF JAPHET MURUGU-(DECEASED)**

**MARY MUGURE MURUGU.....PETITIONER**

**VS**

**JEDIEL M'NGAITI KIRERA.....OBJECTOR**

**RULING**

Japhet Murugu Ikiugu died intestate on 18<sup>th</sup> August 1978. Letters of Administration to his estate was made to his widow Mary Mugure Murugu on 12<sup>th</sup> May 1989 in Nairobi H.C. Succession No. 211 of 1989.

The deceased was according to the cause in Nairobi survived by 2 daughters namely:-

- Irene Mwendwa Murugu
- Mallecera Muthoni Murugu.

The only asset forming the intestate estate to the deceased in the Nairobi cause was Abothuguchi/Mariene/205 and it was distributed equally to the 2 daughters and widow of the deceased.

In Miscellaneous Application No. 159 of 2007 at Meru Jediel M'Gaiti Kirea applied that grant in Nairobi succession cause No. 211 of 1989 be revoked and that an inhibition be lodged on L.R. No. Abothuguchi/205 and that status quo be maintained. Those orders were issued by Lenaola J as he then was on 31<sup>st</sup> October 2007.

In Meru H.C.C.C.No 237 of 1990 Kirera M'Ikuigu and Jediel M'Gaiti Kirera sued the widow to the deceased herein claiming that the deceased held one acre of land in LR Mariene/U-Abothuguchi/205 in trust for the 1<sup>st</sup> plaintiff and that 1<sup>st</sup> plaintiff is entitled to once acre of land from LR 205 and that the transfer of the suit land by 1<sup>st</sup> defendant to the 2<sup>nd</sup> defendant was bad in law and in equity as it was done in breach of trust and was fraudulent. The plaintiffs in C.C No. 237 of 1990 sought that transfer to 2<sup>nd</sup> Defendant be set aside and the register be corrected.

That the one acre in L.R. Abothuguchi/Mariene/205 be transferred to 1<sup>st</sup> defendant and the balance to 2<sup>nd</sup> plaintiff as the only beneficiary to the estate of the deceased. The plaintiffs then sought for damages and costs.

On 22<sup>nd</sup> October 2007 Justice Lenaola dismissed the claim with costs to the defendants. The defendant counter claim against the plaintiff was allowed and an order of eviction was issued against the plaintiffs who were permanently injured from interfering with the suit land. It was declared that the 2<sup>nd</sup> defendant legally owned L.R. Mariene/U.Abothuguchi/205.

Jediel M'Gaiti Kirera claim in the deceased person's estate was that the deceased person held land in trust for his father M'Kirera M'Ikuigu who was the brother of the deceased. He said the evidence of trust was registered at the lands office. He said he was residing in the deceased parcel of land prior to his death. He said his father also resided on the deceased persons land. He said his father died in 2013 and was buried in Kinoru and not on L.R. 205.

He said he was the deceased persons son by virtue of the fact that he brought him up and the Administratrix herein gave him land and a house to live in. He said he was even circumcised at the deceased persons home. He said his father had other brothers who lived on their own portions of land. He said he had one brother who lives with him on LR 205. The applicant herein gave names of his siblings – 6 in number.

He said his siblings live with him on suitland. He said he is claiming M'Kireras land which was consolidated together with the deceased persons land. He admitted that Ex-1 didn't have his father's name. He said there were records at the lands office which showed what his father was entitled to. He said his father didn't have land elsewhere. He said the deceased took him as his son and he was to help the deceased and his grandmother. He said declaration that he was deceased child was made in presence of Respondent herein. He denied that H.C.C. No. 237 of 1990 Kirera M'Ikiugu and Jediel M'Gaiti Kirera was dismissed. He said that succession cause was filed in Nairobi secretly. He said he did appeal against the decision in H.C.C No. 237 of 1990 in this cause. He said his interest in LR 205 was that the deceased and Mary Mugure allowed him to reside on the parcel of land in question. He said he was also claiming on behalf of his father. He said he didn't have authority from father. When cross examined by the court, applicant said that he filed objection his father was alive but had started losing his memory.

He said he was allowed to occupy the deceased person's parcel of land since 1960. He said the deceased and his wife Mary took charge of him as his parents when he was circumcised. He said he is older than the children of the deceased. He said Japheth died in 1978 when he was 22 years. He said neither the deceased nor the wife chased him from suitland. He said his grandfather died in 1964 and was buried in the home where they were initially staying.

The petitioner/Respondent Mary Mugure relied in affidavit she swore and filed on 22<sup>nd</sup> January 2018. She said LR 205 belongs to her husband. She said Jediel had never occupied LR 205 – Abothuguchi/Mariene. She said she used to see Jediel come to visit her mother in law who was staying next to them as her husband was the last born.

She said her husband was secretary to the clan. She said her husband's land was not for the clan. She said land was given to her husband way back in 1964 before demarcation. She said she got married in 1961. She said that out of the 5 acres, 2 was bought by her husband while 2.5 acres was given to him by the clan as a reward as a good secretary. She said her father in law gave each of his sons an acre of land and Jediel's father got one acre. She said Jediel forcefully entered her land and lives in her matrimonial home. She said Jediel had not built any house. She said Jediel forcefully took over after her husband death on 1978. She said she sold land after filing succession cause in Nairobi and it was not necessary to inform Jediel because he is a child to her brother in law. She said she filed cause in Nairobi because Meru was very hostile. She said they wanted to inherit her so she gets sons because she had only daughters. She said the chief refused to write a letter for her because he was part of the system. She said she vacated after her mother in law died in 1988. She said the chief called her from classroom and forced her to write bequeathing and to sons of Kirera. That she left afterwards as her life was under threat. She said Jediel and his father sued her in Meru H.C.C. No. 237 of 1990. She said Jediel's father was buried in Kinoru after she objected to him being buried on her land. She said her husband and her mother in law were buried in suit land. She said the father in law was buried in the elder brother in laws land.

She said she lived with her husband and mother in law in suit land for 16 years. After her husband died she lived with her mother in law for 10 years and it was upon her death that it was decided she didn't deserve to remain on the land. She said Jediel's father had land in Mungambone and the land is still there. She said each of her husbands brother built their homes in their parcels of land. She said when she got married in 1961 there was no child living with her husband. She said Jediel and other children to her brothers- in law used to visit the mother in law at their home. She said she had 2 children and she didn't adopt Jediel. She said she filed petition in respect of her husbands property and listed her 2 children as the beneficiaries. She said Jediel's father had land which he should claim. The objectors submissions are to the effect his claim is based on trust under section 76(b) of the Law of Succession Act.

The petitioner/Respondent to application for revocation also filed written submissions and filed on 10th July 2018 and said the applicant Jediel M'Gaiti Kirera had not satisfied the court why grant of Letters of Administration to the estate of the deceased Japheth Murugu should be revoked.

From the evidence of applicant and his witnesses as well as evidence of the petitioner/Respondent together with the submissions by the parties the issues for determination are:-

- Whether the court has jurisdiction to adjudicate upon claims of trust and adverse possession.
- Whether the claims herein have been adjudicated upon before fully and finally
- Whether the applicant has satisfied the court to warrant being given orders revoking grant made to the Respondent/Administratrix herein

This court has paused the entire file which was reconstructed and established had that the claim by the applicant herein Jediel M'Gaiti Kirera and his father Kirera M'Ikiugu for adverse possession and trust had been made in Meru H.C.C.C. No. 237 of 1990 where Mary Mugure was sued jointly with one James Kirongo ituma as Administratrix of the estate. The applicant and his father (now deceased) in the above suit pleaded that because the deceased had no sons (only a daughter who is married) he adopted the applicant herein as his son under Kimeru customary law, settled him on his land and raised him as his own.

At paragraph 8 of the Judgment of Lenaola J(as he then was) now Judge of the Supreme court of Kenya, he alludes at the age of the suit as 17 years and the need to expedite. It is unfortunate and puzzling that the suit has now metamorphosed into an application for revocation.

At paragraph 9 Justice Lenaola (JSCK) identified the issue for determination as trust. In H. C.C. NO. 237 of 1990 the applicants father the later Kirera M'ikiugu in his evidence said

**“ I state that Mary was not justified in selling that piece of land. The reason is that according to Kimeru custom the deceased brother should inherit the land if the deceased has no son at the time of his death”**

The issue of applicants adoption by the deceased also arose in the civil suit. These claims were dismissed in C.C. No. 237 of 1990. What the

applicant says in this application is what he said in the suit against the Respondent herein. They were ordered to vacate the suit land and pay more profit and they never appeal against the finding since 22<sup>nd</sup> October 2007.

Instead applicant now relied on S.76 of the succession Act to file an application for revocation. I do find the applicant has not proved he was a dependant or a beneficiar to the deceased estate. His problem is that being amle he thinks that he has more entitlement even where he is not directly an inheritor. Even if the deceased had no child and he left a spouse, the land or any property registered in his name would go to that spouse. In absence of spouse and children it goes to the parents before brothers and sisters can be considered applicants right to deceased persons property is very remote in comparison with deceased persons children and wife's rights. I do find the application which has been pending in court since 26<sup>th</sup> October 2007 without merit. The application is dismissed with costs to the Respondent. Mary Mugure, older of inhibition lodged against LR 205 to be lifted forwith. The Respondent at liberty to execute orders in Meru H.C.C.C No. 237 of 1990.

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**HON. A.ONG'INJO**

**JUDGE**

**RULING SIGNED, DELIVERED AND DATED THIS 31<sup>ST</sup> DAY OF JANUARY 2019.**

**In the presence of:**

CA: Kinoti

Mr Kithinji Advocate holding brief for Karanja for Petitioner

Mr Rimita holding brief for Mutegi for Interested party.

Petitioner – N/A

Objector- Present in person.

Applicant:-.

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**HON. A.ONG'INJO**

**JUDGE**