



**REPUBLIC OF KENYA**

**IN THE HIGH COURT AT NAIROBI (FAMILY DIVISION)**

**SUCCESSION CAUSE NO 870 OF 1990**

**IN THE MATTER OF THE ESTATE OF JOHN MURANGA GITHUKA Alias GITHUKA (NYAGATATHI)**

**(DECEASED)**

**MARY WAMBUI KANGARA..... OBJECTOR**

**VERSUS**

**SAMUEL KIBAKI MURANGA ..... RESPONDENT**

**RULING**

1. Before court is an application seeking for revocation of a rectified grant issued on 20<sup>th</sup> June 2017 on grounds that the same was obtained fraudulently, without disclosing all material facts, more particularly the administrator Samuel Kibaki Muranga failed to disclose to the court that the outcome of **Civil Case No.205 of 1971**, and further after obtaining the rectified grant the administrator fraudulently transferred the entire interest in **Muguga/Muguga/547** to his name.
2. The application was supported by the Applicant's affidavit dated 27<sup>th</sup> June, 2017. She deponed therein that she is a beneficiary of the Estate John Muranga Githuka alias Muranga Githuka (Nyagatathi) as she stays together with her children on the share of the property **Muguga/Muguga/547** that belonged to late husband Kangara Githuka, which the administrator's father held in trust for her husband; the administrator's father having sold his portion and relocated to Naivasha several years ago. Further she stated the rectification was meant to include property **No. Muguga/Muguga/547** on the schedule of assets and to have the Applicant registered as owner of her husband's portion but instead the respondent fraudulently had it registered his name.
3. Also in support of the application is the affidavit of Charles Kamau Muranga which gives a similar account as that of the Applicant; confirming that the applicant signed the consent with information that the rectification being sought would enable her get her late husband's share.
4. Similarly the affidavit of Njogu Njuguna dated 23<sup>rd</sup> November 2017 confirms the above information by the applicant and Charles Kamau Muranga and further explains that the land in question was ancestral land that was owned by Githuka Njeri grandfather to the administrator and at the time of distribution to his six wives, the respondent's father registered as the owner for himself and in trust for his younger brother Kangara Githuka, and that the Applicant's father sold his piece and relocated.
5. Affidavits of Peter Kamau Kinyagia, explains further that their grandfather's estate was divided into 2 portions each portion to go to 3 wives. That title No. 501 measuring 7.2 acres was divided to 3 families each getting 2.40 acres. One of the portions for was held by Muranga Nyagatathi for himself and his brother Kangara Githuka as their household had only 2 sons. Muranga Nyagatathi sold his share and relocate to Naivasha in 1966; he sold 0.8 to John Kanyagia and 0.5 to Muranga Githuka the remainder of the land was left for his younger brother Kangara Githuka. Further he informed the court that Muranga Nyagatathi despite selling his portion did not transfer the same to his buyers which led to Case No. 205 of 1971 which case was determined on 15<sup>th</sup> April and 0.8 acres was demarcated from the original 501 to John Kanyagia. Further that 0.5 acres for Muranga Githuka remained with that of Kangara Githuka.
6. The application was opposed vide the Respondent's replying affidavit dated 28<sup>th</sup> June, 2018 where he stated that there was no fraud or concealment of material facts as alleged, as the Applicant signed a consent to rectification of the grant, the Applicant and her children were present in court at the time of seeking for the rectification and they cannot now be heard now to complain.
7. It is not in dispute that the land subject matter is ancestral land that was subdivided and distributed among the beneficiaries of the 6 homes of Githuka Njeri. Secondly it is not disputed that the house where Muranga Nyagatathi and Kangara Githuka belonged got 2.40 acres and the two were the only sons.
8. Thirdly, evidence that also remains undisputed is that Muranga Nyagatathi being the eldest was registered as owner and held the portion

for their house in trust for his younger brother Kangara Githuka. That Muranga Nyagatathi sold his share of 1.30 to John Kinyagia and Muranga Githuka in the 1960's and relocated to Naivasha while his brother Kangara Githuka remained on his portion and upon his demise, his wife and children continued to stay on the same.

9. Fourthly, the consent in support of rectification as signed was for inclusion of the property in question in the list of assets and did not speak to the details of who was to be registered as owner or how it was to be distributed.

10. Even if one is to consider the rectified Grant the Respondent was not to inherit the land all by himself. On what basis then is he registered as the beneficiary of half of the said land?

11. Based on the above facts I am persuaded that the rectified grant was obtained by fraud and concealment of the truth and as such the same must be revoked to the extent that property Muguga/Muguga/547 (½ share) will solely go to **Mary Wambui Kangara** to hold in trust for the family of **Kangara Githuka**.

12. Costs to the applicant.

**Dated and Delivered in Nairobi on this 31<sup>st</sup> day of January, 2019**

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**ALI-ARONI**

**JUDGE**