



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

SUCCESSION CAUSE NO. 248 OF 2002

IN THE MATTER OF THE ESTATE OF DANIEL MURITHI MANENE (DECEASED)

M'MARETE MANENEPETITIONER/APPLICANT

VERSUS

KENNETH MUTWIRI MURITHIRESPONDENT

J U D G M E N T

1. **Daniel Murithi Manene (“the deceased”)** died on 5th November, 2001 at Isiolo aged 41 years. According to the letter of introduction by C.K. Mutea, D.C. Meru Central District, the deceased was survived by **Charity Nkatha Mungania (widow)**, and two children, **Kenneth Mutwiri and Faith Mwenda Murithi**. He left as his estate, **Kiirua/Nkando/496, Kiirua/Nkando/259, Plot at Bura Area Isiolo** and death gratuity.

2. On 8th March, 2002, the Charity Nkatha (“the widow”) petitioned for letters of administration in **Isiolo PM Succ. Cause No.1 of 2002 (“the Isiolo Cause”)** whereby the grant was issued to her on 25th November, 2002. The same was subsequently confirmed on 20th March, 2003 and the estate distributed in accordance with section 35 of the Law of Succession Act Cap 160 Laws of Kenya.

3. On the other hand, **M'Marete Manene (“the petitioner”)** lodged in this court a petition for letters of administration intestate for the same estate on 9th August, 2002. In his petition, he named **Hellen Kanyuru M'Manene (mother), Douglas Mutembei Murithi (son), Kenneth Mutwiri Murithi (son) and Faith Mwendwa Murithi (daughter)** as the survivors of the deceased.

4. On discovering the existence of the **Isiolo Cause**, the petitioner as the father of the deceased, applied for the transfer of the said Cause to this court and for the revocation of grant issued therein. The application was made on 14th December, 2004. Although the Isiolo matter was transferred to this court on 20th March 2006, that application was never prosecuted but the petitioner filed a similar application dated 23rd February 2018.

5. The original respondent, Charity Nkatha passed away on 3rd December, 2017 while the matter was still pending. She was replaced by her son, Kenneth Mutwiri Murithi on 8th November, 2018. On the said date, the petitioner argued his application dated 14th December, 2004. It was argued that the widow had obtained the grant in the Isiolo Cause fraudulently. That she had failed to disclose all the beneficiaries and that she had failed to disclose material particulars.

6. The respondent prayed for time to engage an advocate and requested for 7 days to do so. The matter was therefore adjourned to 28th November, 2018 when, however, the respondent failed to appear. In this regard the application by the petitioner remained unopposed.

7. I have considered the affidavits on record and the submission of Learned Counsel. This is an application for revocation. The grounds upon which a grant may be revoked are set out in **section 76 of the Law of Succession Act (“the Act”)**. This include that the grant was obtained fraudulently, that the proceedings to obtain the grant were defective in substance or that there was concealment of something material.

6. According to the petitioner, the respondent filed the **Isiolo Cause** secretly without informing him; that the proceedings to obtain the grant were defective in substance since some central beneficiaries were left out; that the grant was obtained fraudulently by making of a false statement and by concealment from the court some material facts. Finally, that the grant was obtained by means of untrue allegation of a fact essential in point of law to justify the grant.

7. The application was determined through submissions on the affidavits and witness statements on record. In his supporting affidavit, the petitioner alleged that the respondent was never married to the deceased but was only a girlfriend to the deceased. He laid claim to 2 acres in the deceased estate.

8. **Douglas Mutembei Murithi** stated in his statement dated 10th October 2017 that he is a son of the deceased, born out of wedlock and had been residing at the home of the petitioner. On his part, **Silas Kiragu M’Imanene** stated in his statement that he was a brother to the mother of **Douglas Mutembei Murithi** and that he was the one who brought him to the deceased father’s residence in accordance with the Kimeru Custom and that he has been taken care of by the deceased’s father ever since.

9. In her replying affidavit dated 7th January 2005, the original respondent stated that she was the widow of the deceased. She denied that **Douglas Mutembei Murithi** was a son of the deceased and referred to the eulogy, Obituary and minutes from the Meru Central District Committee dated February 2002. In the Meeting with the District Commissioner, the same was attended by the petitioner’s wife Hellen Kanyuru M’Manene who never brought up the issue of Douglas Mutembei Murithi. In her affidavit dated 5th March 2009, Charity Nkatha averred that the petitioner took part in the funeral arrangements but never included the name of **Douglas Mutembei Murithi**.

10. The issues for determination are; *whether Douglas Mutembei Murithi was a son of the deceased and whether the grant should be revoked.*

11. The petitioner alleged that he was not informed of the filing of the **Isiolo Cause** by the respondent. Under *sections 39 and 66 of the Act*, those with priority to apply for grant is the spouse and child of a deceased.

12. In this case, although the petitioner alleged that the original respondent was not married to the deceased, that was a clear lie if looked at vis a vis the entire evidence on record. The original respondent denying on oath that she was not just a girlfriend but a wife of the deceased. The petitioner later admitted in his witness statement of 9th October, 2017 that Charity Nkatha was a wife of the deceased. The ground that the petitioner was not informed in bringing the **Isiolo Cause** therefore fails. Once Charity Nkatha, came out as widow of the deceased, she had priority in applying for the grant as opposed to the petitioner.

13. As to whether or not the respondent concealed from the court something material to the case or made an untrue allegation of a fact essential in point of law, the petitioner alleged that **Douglas Mutembei Murithi** was a son of the deceased. That he was living with him and was maintained by the deceased during his lifetime. This position was supported by both **Douglas Mutembei Murithi** and one **Silas Kiragu M’Imanene**.

14. Under *section 107 of the Evidence Act, Cap 80*, it is he who alleges a fact that must prove the existence of such fact. It was upon the petitioner to prove that **Douglas Mutembei Murithi** was actually a son of the deceased. There was no birth certificate or any other document whatsoever that was produced to prove that fact.

15. As if that was not enough, neither the petitioner nor **Douglas Mutembei Murithi** nor **Silas Kiragu M’Imanene** disclosed who the mother of **Douglas Mutembei Murithi** was. Her name was neither disclosed nor did she swear any affidavit or file any witness statement. It is a well known fact that the person best placed to know who the father of a child is, is the mother. The allegations of the petitioner in this case are bare. The alleged assistance given by the deceased to **Douglas Mutembei Murithi** was never proved.

16. In any event, both the obituary and the eulogy that was filed in court by Charity Nkatha was neither denied nor challenged. In those documents, the name of **Douglas Mutembei Murithi** does not feature anywhere. Neither did **Douglas Mutembei Murithi** nor the petitioner explain the reason for the omission.

17. In this regard, the totality of the evidence on record does not show that **Douglas Mutembei Murithi** was a son of the deceased either as alleged or at all. He is an imposter. I saw him in court when the matter came up for hearing. He was an adult yet he did not consider it necessary to bring an application in his own right. He hid behind the petitioner, the father of the deceased, who was hell bent to disinherit the widow and the children of his son. To my mind, the petitioner was using Douglas Mutembei Murithi so that to make a claim on his son’s estate. Indeed, he made allegations to the effect that he is the one who assisted the deceased in buying the land and that he was entitled to 2 acres therefrom!

18. In this regard, I find the application to be without merit. I dismiss the same in totality. Since the estate of the deceased had been fully succeeded in the **Isiolo Cause**, there need be no orders on the estate.

19. This being a family matter, I will make no orders as to costs.

DATED and **DELIVERED** at Meru this 21st day of February, 2019.

A. MABEYA

JUDGE