



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI**

**SUCCESSION CAUSE NO. 2933 OF 2008**

**IN THE MATTER OF THE ESTATE OF EVANSON GICHURU**

**MUREITHI alias EVANS GICHURU MURIITHI - DECEASED**

**MARY RUGURU NJOROGE NEE**

**GICHURU (Suing as the Co-Administrator to the Estate of EVANSON GICHURU**

**MUREITHI alias EVANS GICHURU MURIITHI.....APPLICANT**

**VERSUS**

**PETER MURIITHI GICHURU.....DEFENDANT/ RESPONDENT**

**RULING**

1. There are two applications coming for consideration in this Ruling dated 23/2/2018 and 18.4.2018.

2. The Application dated 23.2.2018 filed by PETER MURIITHI GICHURU one of the Administrators of the Estate of EVANSON GICHURU MUREITHI alias EVANSON GICHURU MURIITHI (deceased) seeking the following orders:

**(i) THAT the order issued by this Honourable Court on 31<sup>st</sup> day of October 2016 by Honourable Lady Justice M. W. Muigai be reviewed, vacate and/or set aside by this Honourable Court.**

**(ii) THAT the Applicant/Respondent be restrained by themselves, their agents, servants, employees and any other from trespassing partitioning, entering and interfering with the Respondent applicant quiet enjoyment of LR NO. DAGORETTI/UTHIRU/2275,2274 and DAGORETTI/UTHIRU/2273, DAGORETTI/WAITHAKA/182 and MAELA/NDABIBI BLOCK 2/411 in any manner whatsoever pending hearing and determination of this application.**

3. The Application dated 18.4.2018 is filed by MARY RUGURU NJOROGE a Co-administrator and beneficiary of the Estate of EVANSON GICHURU MUREITHI alias EVANSON GICHURU MURIITHI (Deceased).

4. The Deceased herein EVANSON GICHURU MUREITHI alias EVANS GICHURU MURIITHI (Deceased) died on 16.2.2002. He was survived by the following;

**(a) MARY RUGURU NJOROGE (Daughter)**

**(b) PETER MURIITHI GICHURU (Son)**

5. The two are the Protagonists in the two Applications dated 23.2.2018 and 18.4.2018. They are also the sole beneficiaries and administrators of their father's estate.

6. The two Protagonists were appointed joint administrators on 14.5.2009 and the grant was confirmed on 27.5.2013 and a certificate of confirmation was issued.

7. On 25.2.2015, MARY RUGURU filed a Summon for Revocation of grant (dated 24.2.2015) on the grounds that the grant was confirmed

in her absence and that she did not consent to the mode of distribution.

8. On 31.10.2016, the Court set aside and revoked the confirmed grant and directed that the estate be share equally amongst the two beneficiaries.

9. MARY RUGURU filed the Application dated 18.4.2018 seeking for orders that the Deputy Registrar of this Court executes mutation forms, land control Board Consent, Application forms, transfer forms in respect of Land Parcels No. **PRABETE AND DAGORETTI/WAITHAKA/182, DAGORETTI/UTHIRU/287 and MAELA/NDABIBI BLOCK 2/411** to give effect to the order dated 31/10/2016.

10. PETER MURIITHI on his part filed the Application dated 23.2.2018 seeking to review, vacate and set aside the order dated 31/10/2016 and also seeking to restrain MARY RUGURU by herself or her agents, servants and employees from trespassing, partitioning, entering or interfering with the Applicant's quiet enjoyment of the following properties:

**(a) LR NO. DAGORETTI/UTHIRU/2275,2274**

**(b) DAGORETTI/UTHIRU/2273,**

**(c) DAGORETTI/WAITHAKA/182**

**(d) MAELA/NDABIBI BLOCK 2/411**

11. I have considered the submissions filed in the two competing Applications dated 23.2.2018 and 18.4.2018. It is not in dispute that the two protagonists are the sole beneficiaries and administrators of their father's estates.

12. Regarding the Application dated 23.2.2018, I find that the remedy is to appeal against the orders of the Court and not to seek review of the same.

13. The Applicant PETER MURIITHI was required to act in consonant with MARY RUGURU as the two were co-administrators of their father's estate. He cannot disinherit his sister.

14. I dismiss the application dated 23/2/2018 and direct that the estate be shared equally as directed by the Court.

15. The Application dated 18.4.2018 seeking to have the Registrar of this Court sign all relevant documents is allowed since the Respondent in that Application is not willing to abide with the order of the Court to share the estate.

16. The Deputy Registrar of this Court be and is hereby directed to sign all necessary documents to effect the orders of this court dated 31.10.2016 in the following terms;

(i) THAT the Deceased's Estate shall be distributed in equal shares to:

**(a) MARY RUGURU NJOROGE**

**(b) PETER MURIITHI GICHURU**

Orders to issue accordingly.

**DELIVERED, SIGNED AND DATED IN OPEN COURT THIS 26<sup>TH</sup> DAY OF APRIL, 2019**

**ASENATH ONGERI**

**JUDGE OF THE HIGH COURT OF KENYA, NAIROBI.**