



**REPUBLIC OF KENYA**

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

**SUCCESSION CAUSE NO. 261 OF 2006**

**IN THE MATTER OF THE ESTATE OF M'NKURARU**

**MUTWAMWARI ALIAS NKURARU MUTWAMWARI (DECEASED)**

ROONEY MUGAMBI.....1<sup>ST</sup> APPLICANT

PATRICK MWENDA.....2<sup>ND</sup> APPLICANT

NANCY MUTHONI.....3<sup>RD</sup> APPLICANT

BENARD MUTUMA.....4<sup>TH</sup> APPLICANT

FAITH KARIMI.....5<sup>TH</sup> APPLICANT

JACKSON KIOGORA.....6<sup>TH</sup> APPLICANT

VERSUS

MARGARET KARAMANA MBURUNGA.....PETITIONER

MARTIN MWENDA MURIUKI.....INTERESTED PARTY

**R U L I N G**

1. **M'NKURARU MUTWAMWARI** alias **NKURARU MUTWAMWARI** (“the deceased”), died on 3<sup>rd</sup> September, 1972. According to the chief’s letter of introduction dated 13<sup>th</sup> August, 2006, the deceased was survived by his two daughters; **Margaret Karamana Mburunga** and **Zipporah Nthama M’Mwithiga** and his estate comprised of **Land parcel No. Nyaki/Munithu/199** (hereinafter ‘the Suit Land’).

2. On 22<sup>nd</sup> August, 2006, **Margaret Karamana Mburunga** (“the petitioner”) petitioned for the grant of letters of administration intestate which was issued to her on 23<sup>rd</sup> January, 2007 and confirmed on 26<sup>th</sup> March, 2007. On confirmation, the entire estate of the deceased was distributed to her. At confirmation, she swore that her only sister had died leaving no child.

3. By an application dated 18<sup>th</sup> April, 2018, the applicants sought to revoke the grant under **Section 76 of the Law of Succession Act CAP 160 of the Laws of Kenya**. In addition, the applicants sought that the suit land do revert back to the deceased’s name.

4. The grounds upon which the application was grounded were set out in the body of the Summons and the supporting affidavit of Patrick Mwenda but shown to have been sworn by Rooney Mugambi on 11<sup>th</sup> April 2018. It was contended that the deceased was survived by the aforesaid two daughters and one son, Jackson Kiogora. That **Zipporah Nthama** died on 17<sup>th</sup> November 2000 and that she was the mother of the 1<sup>st</sup> to 5<sup>th</sup> applicants together with Hassan Abdul and Damaris Ntinyari. That the petitioner had concealed this fact from the court.

5. The applicants further contended that they all were born, grew up and lived on the suit land until the death of their mother. That the petitioner chased them away after the grant was confirmed. The petitioner disinherited them although they were entitled to a share of the estate as well as her brother.

6. The application was opposed by **Martin Mwenda Muriuki** through his replying affidavit sworn on 11<sup>th</sup> July, 2018. He contended that following the due process, he bought the suit land from the petitioner at a consideration of Kshs. 440,000/- whereby the title was transferred to him in 2011 and that he has since extensively developed the land.

7. The petitioner also opposed the application vide her replying affidavit sworn on 4<sup>th</sup> March, 2019. She stated that, when her sister died, she took care of her children in addition to her own 5 children. That burden was too heavy on her that once the grant was confirmed, she sold the suit land to get money to take care of the new big family. That she had bought **LR NO. KIIRUA/RUIRI/1103** as compensation for the inheritance of the applicants. That all along, the applicants had known about this Cause. That she sold the land to the interested party a fact which the applicants have never challenged for over 12 years.

8. This matter was canvassed by way of affidavit evidence and written submissions. The applicants submitted that the proceedings to obtain the grant were defective as the petitioner did not obtain their consent as is required under **Rule 26 of the Probate and Administration Rules**. That material fact was concealed which led to the applicants being disinherited. That the grant that effected the dealings in the Suit Land was procured in contravention of the law and hence any claim over it cannot be protected.

9. The interested party submitted that, he is a bona fide purchaser for value and relied in the case of **Mwaura v Attorney General & 4 others [2017] eKLR**. That his interest is protected under **Section 93(1) of the Law of Succession Act**.

10. Having considered the evidence and the submission of the parties, the issues for determination are; ***whether the grant should be revoked and if so, what the position of the interested party is.***

11. There was an error in the supporting affidavit. The affidavit was said to be sworn by Patrick Mwenda but signed by Rooney Mugambi. Although none of the parties took up the issue that was a material defect that was not rectified before the hearing of the matter.

12. The grounds for revoking a grant are set out in **section 76 of the Law of Succession Act, Cap 160 (“the Act”)**. The applicants allege that the proceedings to obtain the grant were defective; the grant was obtained fraudulently and by means of untrue allegation of fact essential in a point of law. It led them to being disinherited although they are beneficiaries of the deceased through their late mother.

13. According to the petitioner and the letter of introduction by the chief of Munithu Location, the deceased died intestate and left behind two children. However, in the application and supporting affidavit, the applicants alleged that there was a 3<sup>rd</sup> child of the deceased, a son by the name of **Jackson Kiogora** whom they had joined as the 6<sup>th</sup> applicant. This fact was not denied by the petitioner.

14. The petitioner has admitted that the applicants are children of her late sister. The applicants stated that they were born and brought up in the suit land. They were obviously dependent on the suit land by virtue of being children of the daughter of the deceased.

15. The applicants therefore could only bring proceedings in respect of the estate of their late grandfather only as beneficiaries to the estate of their late mother. There was no evidence that the applicants had applied to be appointed as administrators of the estate of their late mother. That may have been an oversight on the part of their legal counsel.

16. That however, does not defeat their interest. It is an oversight that can be cured. I have noted that the petitioner admitted that she had lied to the court when she swore that her sister had died without a child in order for the entire estate to be distributed to her. She admitted that she never informed the applicants of her intention to come to court.

17. With all the aforesaid irregularities, that grant cannot stand. However, since the application is fatally defective as the applicants had not been appointed as administrators of the estate of their mother through whom they can only claim, I will strike out the application and not dismiss it. They have been meted out with the greatest injustice. They were evicted from the only place they knew to be their home. They are orphans whose life has been turned upside down by the greed of their aunt, the petitioner.

18. For the foregoing reasons, pending the applicants regularizing their position, I will order that there be an inhibition of **title no. Nyaki/Munithu/199**. I make this order under **section 47 of the Act** in order to protect the property from being misused.

19. I should point here that, I am aware of the interested party’s claim and the provisions of **section 93 of the Act**. However, those are issues that will be addressed at the opportune time when considering a properly brought application under **section 76 of the Act**.

20. For what I have stated above, the application is hereby struck out and I will make no order as to costs.

**DATED and DELIVERED at Meru this 10<sup>th</sup> day of April, 2019.**

**A. MABEYA**

**JUDGE**