

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

FAMILY DIVISION

SUCCESSION CAUSE NO. 444 OF 2003

IN THE MATTER OF THE ESTATE OF SAMWEL MUCHIRI NJUGUNA (DECEASED)

ESTHER WACHEKE GITHINJI.....APPLICANT

JUDGMENT

1. The deceased in this matter **Samwel Muchiri Njuguna** sold **L.R. No. 1317/195** to **Josphat Muchangi Muriithi** (deceased) the husband to the Applicant herein Esther Wacheke Githinji a fact acknowledged by all parties.
2. On the 29th of September 2011 the administrators of this estate applied for rectification of the grant herein so as to include the subject matter L.R. 1317/195 in the grant and for the same to be “inherited” by Stephen Mbugua Githuka who will hold the same in trust for Kelvin Muriithi Muchangi.
3. Stephen Mbugua Githuka is said to be a brother to the deceased. Josphat Muchangi Mureithi and Kelvin Muriithi Muchangi son of the deceased.
4. In this cause it appears that distribution of two estates have been Dealt with i.e. estate of Samuel Muchiri Njuguna and that of Josphat Muchangi Muriithi.
5. Firstly, two estates cannot be administered under one file. Secondly it is not clear in what capacity Stephen Mbugua Githuka was inheriting the property and holding it in trust, thirdly, the deceased Josphat Muchangi Muriithi had a wife and it appears that she was not consulted in the matter as referred above. Fourthly it is not clear whether grant of administration of the estate of Josphat Muchangi Muriithi was obtained by the wife, or brother or son to be able to deal with his estate.
6. The only issue the Applicant has raised in the application concerns her late husband’s estate and distribution without her involvement which complaint is justifiable. However considering that the Applicant is not a beneficiary of this particular estate of Samuel Muchiri Njuguna it will not be justifiable to revoke the grant herein which I hereby decline to do.
7. I believe that if Njagi J who heard the application dated 29th September, 2011 had the information that has been placed before court today he would not have granted the order and for the reasons enumerated above. I therefore review the orders issued on the 6th of December, 2011 allowing registration of property L.R. No. 1317/195 in the names of Stephen Mbugua Githuka to hold in trust for Kelvin Muriithi Muchangi so that the property will now be registered for the benefit of the estate of Josphat Muriithi Muchangi.
8. The widow is advised to apply together with the son for grant of representation of the estate of Josphat Muriithi Muchangi so that the issue of representation and distribution of the estate of Josphat Muchangi Muriithi can be dealt with.
9. If this has been done then the widow can make a claim under that succession cause.
10. Costs in the cause.

DATED, SIGNED and DELIVERED at NAIROBI this 23rd DAY OF May, 2019.

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ALI-ARONI

JUDGE