



**REPUBLIC OF KENYA**

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

**FAMILY DIVISION**

**SUCCESSION CAUSE NO. 1635 OF 1997**

**IN THE MATTER OF THE ESTATE OF FLORENCE WAMUTHITHI MUNGAI – (DECEASED)**

**RULING**

1. The Deceased in this Succession Cause, FLORENCE WAMUTHITHI MUNGAI died intestate on 9<sup>th</sup> November, 1995 leaving behind one beneficiary LOISE NJERI NGUGI who is the Petitioner herein.
2. The Petitioner petitioned the estate of her mother and she was issued with grant of letters of administration on 16.6.1997 which have not yet been confirmed.
3. The Protestor herein CHARLES KIMANI MUNGAI filed an Affidavit of Protest dated 23.8.2005 on behalf of himself and his co-protestor MOSES NGIGI MUNGAI.
4. The objector has deposed in the affidavit of Protest that LR. NO. 6/GITHEMBE/725 belongs to the Estate of their father who passed away before the land registration was done and who had four wives.
5. The protestor further stated that the deceased herein held the estate in trust for all the households.
6. The Protestor also said in the affidavit of protest that the deceased herein later re-distributed the estate but since RUFUS NGIGI the only child of JANET MUGURE had gone missing around 1987 and could not be traced his share remained with the deceased herein and he identified the same as LR. NO. LOC 6/GITHEMBE/725.
7. The Protestor seeks that the said parcel of land belonging to their father's estate should revert back to their father's estate for re-distribution.
8. The Petitioner filed an affidavit dated 22/9/2005 in which she deposed that she is the only child of the deceased and further that the deceased had always been the registered owner of the LC No. LOC 6/GITHEMBE/725 and at no time was the said property registered in the name of the father of the deceased.
9. The Petitioner denied the allegations that the land was held in trust on behalf of RUFUS NGIGI since it was not their father's estate.
10. The parties filed written submissions. The Protestors filed submissions dated 14.8.2009 and also further submissions dated 18.9.2019.
11. The Protestors said in their submissions that they were seeking for orders that the property Land Parcel No. LOC 6/GITHEMBE/725 should not form part of the estate of the deceased since she held it in trust for the house of JANET MUGURE who was the mother of RUFUS NGIGI.
12. They submitted that the objector's father had four wives as follows:
  - (i) FLORENCE WAMUTHITHI
  - (ii) JANET MUGURE
  - (iii) VIRGINIA WAMAITHA
  - (iv) MARGARET WAMBUI

13. They said in the submissions that FLORENCE WAMUTHITHI was the mother of the Petitioner LOISE NJERI.
14. JANET MUGURE was the mother of RUFUS NGIGI who disappeared without trace in 1987.
15. VIRGINIA WAMAITHA was the mother of the two protestors CHARLES KIMANI and PATRICK NJOGU.
16. MARGARET WAMBUI was the mother of MOSES NGIGI.
17. They submitted that their father died intestate before demarcation and the deceased herein who was the first wife was registered as trustee of the following parcels which were later distributed to the respective houses.

**(i) LR. NO. LOC 6 GITHEMBE/724 - 1<sup>st</sup> house of FLORENCE –(Deceased)**

**(ii) LR. NO. LOC 6 GITHEMBE/725 -2<sup>nd</sup> house of JANET MUGURE –(Deceased)**

**(iii) LR. NO. LOC 6 GITHEMBE/726 3<sup>rd</sup> House of VIRGINIA WAMAITHA**

**(iv) LR. NO. LOC 6 GITHEMBE/727- 4<sup>th</sup> House of MARGARET WAMBUI**

18. The Protestors said they are only claiming LR. NO. LOC 6 GITHEMBE/725 which belongs to the 2<sup>nd</sup> house where RUFUS NGIGI was beneficiary and the 2<sup>nd</sup> wife is now deceased.

19. The Petitioner filed submissions dated 7.9.2009 which were highlighted orally in Court on 6.11.2019. The Petitioner stated in his submissions that the Property LR. NO. LOC 6 GITHEMBE/725 was registered in the name of the deceased herein and that at no time did it belong to the father of the protestors.

20. The Petitioner submitted that the protestor have no locus standi to file the Protest since he states LR. NO. LOC 6 GITHEMBE/725 belongs to the estate of their father.

21. It was further submitted for the Petitioner that the protestors said that their father died before demarcation and therefore he had no title to the land.

22. Further that it was submitted that RUFUS NGIGI disappeared in 1987 and yet it has not been shown that any application was filed to have the presumption of death raised in order to file Succession Proceedings in the Estate of RUFUS NGIGI.

23. I have considered the written submissions filed herein. The issues for determination in the protest are as follows:

**(i) Whether the Protestors have Locus Standi to raise the Protest to confirmation of grant.**

**(ii) Whether LR Loc.6/GITHEMBE/725 forms part of the estate of the deceased herein.**

**(iii) Whether the grant of letters of administration issued to the Petitioner herein on 13.10.1997 should be confirmed.**

**(iv) Who pays the costs of this suit?**

24. On the issue as to whether the Protestors have Locus Standi to raise the protest, I find that the Protestors state in their affidavits and submissions that they are raising the protest on behalf of the estate of their father who died before demarcation of the land and also on behalf of one RUFUS NGIGI who disappeared in 1987 who was a son to JANET MUGURE who was the second wife of their father.

25. This Court in Alfred Njau & 5 others vs. City Council of Nairobi [1983] eKLR put it in the following terms:-

*“The term locus standi means a right to appear in Court and, conversely, as is stated in Jowitt’s Dictionary of English Law, to say that a person has no locus standi means that he has no right to appear or be heard in such and such a proceeding.”*

26. The Protestors have not demonstrated that they have letters of administration on behalf of the estate of their father they have also not shown that they filed any application or have a presumption of death raised with respect to RUFUS NGIGI who they said disappeared in 1987 which period is more than 7 years.

27. Virginia Edith Wamboi Otieno vs Joash Ochieng Ougo & Another CA No 31 of 1987 in which the Court of Appeal held as follows:-

*“But an administrator is not entitled to bring an action as ...before he has taken out letters of administration. If he does the action is incompetent from the date of inception.”*

28. I find that the two protestors have no locus standi to raise the objection as it is only personal representatives who can act on behalf of the estate of their father.

29. On the issue as to whether LR. NO. LOC 6 GITHEMBE/725 should form part of the estate of the deceased, I find that the title is in the name of the deceased herein (FLORENCE WAMUTHITHI)

30. There is no evidence that the title was transferred from the name of the father of the Protestors and the issue of the alleged trust has not been proved.

31. I accordingly find that the said land parcel LR. NO. LOC 6 GITHEMBE/725 forms part of the estate of the deceased herein.

32. On the issue as to whether the grant of letters of administration issued to the Petitioner herein LOISE NJERI NGUGI should be confirmed, I find that the Petitioner filed a summons for confirmation dated 8.7.2005 to which the protestor filed the affidavit of protest dated 23.8.2005 which forms the basis of this hearing.

33. I find that this Court having held that the Protestors have no locus standi to raise the Protest on behalf of the estate of their father without letters of administration, and also in view of the finding that the suit property LR. LOC 6/GITHEMBE/725 forms part of the estate of the deceased herein, the letters of administration issued to the Petitioner ought to be confirmed.

34. The objection filed by the Protestors has no basis and the same is dismissed and the grant of Letters confirmed in the following terms:

**(i) THAT the suit Property LR. NO. LOC 6 GITHEMBE/725 forms part of the Estate of the deceased as the same is registered in the name of the deceased and there is no evidence that she was holding the same in trust for the estate of the Protestor's father.**

**(ii) THAT the Protestors have no locus standi to raise the protest since they are not personal representatives of the Estate of their father.**

**(iii) THAT there is no evidence that the suit property LR. LOC. 6/GITHEMBE/725 was held in trust for RUFUS NGIGI.**

**(iv) THAT no application has been filed for a presumption of death to be raised in respect of RUFUS NGIGI who is alleged to have disappeared since 1987.**

**(v) THAT the Protest has no merit and it is accordingly dismissed.**

**(vi) THAT the summons for confirmation dated 8.7.2005 be and is hereby allowed.**

**(vii) THAT the grant of letters of administration issued to the Petitioner LOISE NJERI NGUGI on 13.10.1997 be and is hereby confirmed.**

**(viii) THAT the property to devolve upon the administrator LOISE NJERI NGUGI who is the sole beneficiary of the estate of FLORENCE WAMUTHITHI (Deceased).**

**(ix) THAT each party to bear its own costs of this suit.**

**DELIVERED, SIGNED AND DATED IN OPEN COURT THIS 22<sup>ND</sup> DAY OF NOVEMBER, 2019**

**ASENATHONGERI**

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