



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT CHUKA
SUCCESSION CAUSE NO. 719 OF 2015
(FORMERLY EMBU SUCCESSION CAUSE NO. 173 OF 2002)
IN THE MATTER OF THE ESTATE OF THE LATE MIERI GICHUNGE (DECEASED)

JACK GITAARI MIERI.....PETITIONER

VERSUS

KAARI MURITHI.....1ST OBJECTOR

BONFACE RUGENDO.....2ND OBJECTOR

AND

JULIET CIAMWARI.....APPLICANT

R U L I N G

1. This ruling relates to the Summons for Revocation of grant dated 28th April 2017 taken out by Juliet Ciamwari, the applicant herein relates to the estate of the late **MIERI GICHUNGE** (deceased) who died on 3rd January, 1998 domiciled in Gitareni Sub-Location. The grounds upon which the summons now before is based are as follows namely:-

(i) That the proceedings to obtain the grant were defective since no disclosure was made that the deceased herein MIERI GICHUNGE was promiscuous and as such his estate should be administered as per Section 40 of the Law of Succession Act.

(ii) That the Letters of Administration were obtained fraudulently and by concealment from the court that the deceased had two wives namely JESCA NKUI (deceased) as 1st wife and GLADYS CIAMATUMU as the 2nd wife.

(iii) That the honourable court proceeded to grant the Letters of Administration based on the misrepresentation and concealment of material facts by the Petitioner and the Objectors.

2. In her Supporting Affidavit sworn on 28th April 2017, the applicant herein depones that she is a daughter to the deceased and that it has come to her attention that the grant issued in this cause was obtained through deception and concealment of material facts. She contends that the deceased was married to two wives under Meru/Chuka Customary Law and that in the premises the estate should have been administered as provided under **Section 40** of the **Law of Succession Act**. It is further contended that the first wife predeceased the deceased as she died in April, 1995 and that the applicant was her only daughter.

3. The applicant further depones that the 2nd wife of the deceased Gladys Ciamatumu had seven children with the deceased namely:-

(i) Jack Gitari (Petitioner)

(ii) Elias Mbuba (deceased)

(iii) Margaret Ciamumu

(iv) Priscilla Mutegi

(v) Evelyn Kagendo

(vi) *Mary Kageni and*

(viii) *Evangeline Ntunturi.*

She further depones that the late Elias Mbuba was married to Kaari Muriithi who was the objector in this cause.

4. According to the applicant the estate of the deceased was initially comprised in **L.R. No. KARINGANI/GITARENI/241** before subdivision which the estate divided into 2 parcels namely **KARINGANI/GITARENI/1774** and **KARINGANI/GITARENI/1775**. She further depones that the deceased gifted the petitioner land parcel **No. KARINGANI/GITARENI/1775** but added that the Petitioner was to hold it in trust for the 2nd house and in that respect parcel **No. KARINGANI/GITARENI/1774** should go to her a representative of the 1st house. She complains that the 2nd wife took all the money in the deceased bank account livestock and personal effects to the exclusion of the first house.

5. In her oral evidence in court, the applicant told this court that she was neglected in the distribution of the estate and that she was not notified about this cause when it was filed. Her main contention is that she should have been given three to four acres on account that her deceased mother should have been given a share which then automatically go to her as her only child.

6. Jack Gitaari Mieri the Petitioner/Respondent herein has opposed this application on the ground that the applicant in his view was aware of this cause all along. In his oral evidence in court, the Respondent accused one of the Objector, Kaari Muriithi from wanting to take the whole estate and using the applicant to achieve her goal after failing in her bid in the previous proceedings in this cause. The Respondent further stated that the applicant had never shown any interest in the estate from the time it was filed all through the objections proceedings and that Kaari looked for her in her quest to get what she had failed to get during those proceedings.

7. The Respondent has conceded that he was given parcel **No. KARINGANI/GITARENI/1775** by his late father as a gift *inter vivos* and added that the applicant was given one acre of the estate as per the wishes of the deceased. He disputes the applicant's claim that she should be given three acres.

8. This court has considered this application and the provisions of **Section 76** of the **Law of Succession Act** which gives guidelines on the grounds upon which a grant can be nullified whether confirmed or not. The main gist of this application is that there was concealment and misrepresentation when the Respondent brought the petition for Letters of Administration in this cause. While this is one of the grounds under the law to nullify a grant, I have gone through the evidence tendered in this application including the affidavits filed and what comes out clearly is not misrepresentation or concealment *per se*. The applicant's main contention is that the distribution of the estate did not take into account the fact that the deceased was married to two wives **JESCA NKUI** (deceased) and **GLADYS CIAMATUMU**. However the undisputed facts presented before this court shows that the 1st wife predeceased the late **MIERI GICHUNGE** (deceased). Therefore at the time of distribution (which was done in this court after full hearing of the objection filed herein), the interests of **JESCA NKUI** (deceased) on the estate had extinguished. A deceased person has no inheritance right over an estate of deceased person. Only the living can claim such rights under the Law of Succession.

9. The other ground listed as the first ground in this application is strange in law because the promiscuity of a deceased person is not a factor under **Section 40** of the **Law of Succession Act** any other provision of the law governing succession proceedings unless a party alleging the same is able to prove that there are children gotten out of such behaviour by deceased during his lifetime.

10. This court has also noted that the application before me is loudly and perhaps deliberately silent about the decision delivered in this cause on 3rd November, 2016 where this court distributed the estate equitably to all the beneficiaries of the estate including the applicant herein who was given one acre just like all the other children. The Respondent's claim that the applicant has been aware of this cause and has been instigated to bring up this application is perhaps not without justification. This is because the applicant brought this application on 19th May 2017 when the record shows that this cause was filed way back in 1999. If it is true that the applicant and her children has been on the estate all that time certainly they ought to have been part of the Objectors who filed their objection together with the other Objectors in this cause. Furthermore she told this court at hearing of this application that she became aware of this cause in 2016 and the question is why did she not come to court to complain that she had been locked out of the objection proceedings. In my view, there is every likelihood that the applicant and the 1st Objector (Kaari Muriithi) are trying to get a second bite on the plate of justice. In my view that is an abuse of court process. Litigation must come to an end. Once justice has been served or dispensed it is done and those aggrieved by what has been given by the court should appeal rather than moving back in circles.

11. In the end this court finds no merit in this application. The grounds upon which the application has been brought have not proved and do not hold any water. The application is dismissed but I make no order as to costs given the nature of the application and the relationship of the parties herein.

Dated, signed and delivered at Chuka this 28th May, 2018.

R. K.LIMO

JUDGE

28/5/2018

Ruling dated, signed and delivered in the open court in the presence of Petitioner/Respondent in person and the Applicant in person and 1st Objector applicant in person.

R.K. LIMO

JUDGE

28/5/2018