



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

SUCCESSION CAUSE NO. 703 OF 2013

IN THE MATTER OF THE ESTATE OF LATE M'MUGAMBI M'MBUI (DECEASED)

JACKSON KIAMBI MUGAMBI.....PETITIONER

VERSUS

JOSEPHAT NTEERE M'KIURIKA.....OBJECTOR

RULING

1. **M'MUGAMBI M'MBUI ("the deceased")** died on 7th May, 2011. He left behind Maria Karai Mugambi (widow), Jackson Kiambi Mugambi, Florence Kanana M'Mugambi, David Mwenda Mugambi and Samuel Mbaya Mugambi as his survivors.
2. On 30th December, 2013, Jackson Kiambi Mugambi ("the petitioner") applied for letters of administration intestate for the estate of the deceased which were issued to him on 19th March, 2014. The grant was subsequently confirmed on 23rd October, 2014 with the entire estate comprising of **Abothuguchi/Mariene/62** being wholly distributed to the petitioner.
3. On 1st March, 2016, the Objector applied for the grant to be revoked on the grounds, inter alia, that; his family was not involved yet the deceased had been registered as the proprietor of their property **Abothuguchi/Mariene/182** in their trust; that that property had been left out during distribution and that the petitioner was in the process of disposing off the same.
4. The petitioner filed a Replying Affidavit in response to the application. He admitted that the property known as **Abothuguchi/Mariene/182** was registered in the name of the deceased in trust for the family of the objector. He stated that he had no intentions of disposing that property and that he had excluded it from distribution by mistake.
5. Although directions were made that the parties file affidavit evidence on which they were to be cross-examined on, they did not do so as they seemed to be in agreement with the claim by the objector. In this regard, the court decided to take oral evidence from the petitioner and the objector.
6. **PW1 Jackson Kiambi Mugambi** told the court that the deceased was the registered proprietor of the two properties. That he held **Plot No. 182** in trust for **David Kaburia** whose children were; Josphat Nteere (objector), James Muthee (deceased but left Janet Kioro (widow) Purity Ngugi James and Pamela Karimi) and Jotham Muriungi.
7. He further told the court that the deceased was survived by Maria Karai Mugambi, Jackson Kiambi Mugambi, Peter Mbaya Mugambi, David Mwenda Mugambi and Florence Kanana Mugambi. That the family had agreed that **Plot No. 62** should be distributed to Maria Karai Mugambi, Jackson Kiambi Mugambi and Peter Mbaya Mugambi. That David Mwenda Mugambi was not entitled as the deceased had bequeathed him some land during his lifetime and that Florence Kanana was not interested in receiving anything from the estate.
8. **OW1 Jotham Muriungi Kaburia** testified on behalf of the objector. He told the court that he was a nephew of the deceased as he was a son to David Kaburia, a brother to the deceased. That his brothers were; Josphat Nteere (the objector) and James Muthee (deceased). That **Plot No. 182** should be distributed to the objector and the family of James Muthee as he was not interested in getting anything from that property.
9. I have considered the entire record and the testimonies of the witnesses who appeared before me. It is not in dispute that the two properties are registered in the name of the deceased. It is also not in dispute that he was registered as trustee of the family of his brother **David Kaburia** in respect of **Plot No. 182**.
10. **Florence Kanana** and **Jotham Muriungi** attended court on the date of trial and both renounced their interest in their respective shares on the properties. David Mwenda appeared in court on the date of delivery of this Ruling and confirmed that he had been catered for. Mr. Josphat Ntere M'Kirika swore an affidavit on 2nd of August, 2018 and proposed that his share in plot No. 182 be held jointly with his family.

The Certificate of confirmation of grant dated 23rd October, 2014 is hereby rectified as follows: -

a) Abothuguchi/Mariene/62

Maria Karai Mugambi

Jackson Kiambi Mugambi In equal shares

Peter Mbaya Mugambi

b) Abothuguchi/Mariene/182

i) Josphat Ntere M'Kirika

Judith Gaceri Nteere

Nicholas Muriuki Nteere jointly

Caroline Mugure Nteere

Doreen Miriko

ii) Janet Kioro

Purity Ngugi James In equal shares

Pamela Karimi

Patrick Mukira

It is so ordered.

DATED and DELIVERED at Meru this 27th day of September, 2018.

A. MABEYA

JUDGE