



**REPUBLIC OF KENYA**

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

**SUCCESSION CAUSE NO. 34 OF 2015**

**IN THE MATTER OF THE ESTATE OF JACKSON MARETE S/O KAMWIRA alias MARETE  
- (DECEASED)**

**HANNAH NYAGUTHI MUNYIRI ..... 1<sup>st</sup> PETITIONER**

**ARTHUR MWANGI .....INTERESTED PARTY**

**AND**

**1. ZAKAYO KAIMENYI MUGWIKI .....1<sup>st</sup> APPLICANT /BENEFICIARY**

**2. DOROCAS NYEGERA MWANGI ..... 2<sup>nd</sup> APPLICANT/BENEFICIARY**

**3. GERALD GITONGA M'INOTI ..... 3<sup>rd</sup> APPLICANT/BENIFICIARY**

**4. RODAH KIENDE MUUKARIA .....4<sup>th</sup> APPLICANT/BENIFICIARY**

**5. MARY KIENDE ..... 5<sup>th</sup> APPLICANT/BENIFICIARY**

**6. ROBERT GITHUA GATHAKA ..... 6<sup>th</sup> APPLICANT/BENIFICARY**

**7. GIBSON GATOBU MUGAMBI ..... 7<sup>th</sup> APPLICANT/BENIFICARY**

**8. ROSE KANINI GITOBU .....8<sup>th</sup> APPLICANT/BENIFICARY**

**9. PETER GITONGA RUTERE .....9<sup>th</sup> APPLICANT/BENIFICARY**

**10. JAPHET KOOME MUNGATIA ..... 10<sup>th</sup> APPLICANT/BENIFICARY**

**11. LUCY WANGECHI NGARARIGA ..... 11<sup>th</sup> APPLICANT/BENIFICARY**

**ON BEHALF OF STEPHEN WAMWEA NJOGU**

**12. MORRIS MURIITHI MIRITI .....12<sup>th</sup> APPLICANT/BENIFICARY**

**JUDGMENT**

1. The deceased Jackson **Marete** died on 21<sup>st</sup> November, 1971. It is important to bear in mind that date of

death as I go through this judgment. The deceased was survived by:

- **Hannah Nyaguthii Munyiri** daughter
- **Joyce Gathoni Kaihato** daughter
- **Leah Wanjira Mbatia** daughter
- **Catherine Njeri Muriithi** daughter
- **Milkah Satiria Marete** daughter
- **Gladys Nduta Mue** daughter
- **David Ndirangu Marete** son.

2. The oldest daughter Hannah Nyaguthii Munyiri on 13<sup>th</sup> February, 2015 petitioned for grant of letters of administration intestate in respect to the deceased estate. That petition had the consent of all the other children of the deceased. The only asset listed in the petition was **parcel No. L. R. 5165/9** (herein after referred to as the deceased's land).

3. After that petition was gazetted on 30<sup>th</sup> April, 2015. The court issued a grant on 5<sup>th</sup> June 2015 to the petitioner Hannah Nyaguthii Munyiri.

4. After the grant was issued there was a flurry of action by intervenors alleging interest in the estate. The first was by Arthur Mwangi Kang'au who stated that he owned half share of the estate's parcel of land that is the deceased's land. Arthur Mwangi's allegation was supported by the copy of the title of that parcel of land which title was also attached to the petition herein. The title reflects that on 18<sup>th</sup> December, 1968 the deceased sold to Arthur Mwangi Kang'au un divided half share of the parcel **L R No. 5165/9**, (the deceased's land).

5. The other intervenors were twelve in number. All sought to be joined as interested parties on the ground that they purchased the deceased land from David Ndirangu Marete. I will list each of those intervenors indicating when they alleged they purchased's the deceased land as follows;

**NAME OF PURCHASER NAME OF SELLER LAND PURCHASED DATE OF PURCHASE**

ZAKAYO KAIMENYI MUGWIKA DAVID NDIRANGU MARETE L. R. 5165/9 19.9.2012

DOROCAS NYENGERA MWANGI DAVID NDIRANGU MARETE L. R. 5165/9  
30.11.2010

GERALD GITONGA M'NOTI DAVID NDIRANGU MARETE L. R. 5165/9 28.12.2010

RODAH KIENDE MUKARIA ARTHUR MWANGI KANG'AU L. R. 5765/9 13.3.2014

MARY KIENDE DAVID NDIRANGU MARETE L. R. 5165/9 16.3.2012

ROBERT GATHAKA DAVID NDIRANGU MARETE L. R. 5165/9 5.5.1999

GIBSON GATOBU MUGAMBI DAVID NDIRANGU MARETE L. R. 5165/9 22.9.2010

ROSE KANINI GATOBU ARTHUR MWANGI KANG'AU L. R. 5165/9 11.6.2014

PETER GITONGA RUTERE

DAVID NDIRANGU MARETE NOT INDICATED NOT INDICATED

JAPHET KOOME MUNGATIA WITH LYDIA GATWIRI NDATHO

6. The petitioner filed a summons for confirmation of grant date 10<sup>th</sup> October 2016 where the petitioner distributed the deceased's half share of **parcel L R No. 5165/9** to herself. That summons for confirmation has been protested by the above listed purchasers. The Purchasers seek through the affidavit of Zakayo Kaimenyi Mugwika that the deceased's half share of parcel L.R.5165/9 be distributed to them in the portions they purchased from David Ndirangu Marete.

7. It ought to be understood that David Ndirangu Marete, the son of the deceased sold the various portions of the deceased land when he firstly had not petition for grant of letters of administration of the estate, and secondly when the grant issued to Hannah Nyaguthi Munyiri on 5<sup>th</sup> June, 2015 had not been confirmed. **Section 82 of the Law of Succession, Cap 160**, forbids such sale. **That Section 82 (b) (ii) provides that personal representatives have powers-**

*to sell or otherwise turn to account, so far as seems necessary or desirable in the execution of their duties, all or any part of the assets vested in them as they think best:*

*Provided that: –*

(i) .....

(ii) *no immovable property shall be sold before confirmation of the grant.*

8. **Section 45 of Cap 160** further criminalizes sale of the deceased's property except where it is authorized by the Act, Cap 160. Justice Edward M. Muriithi had occasion to consider the Law where deceased property is sold when not authorized under the law in the case. **JOHN MUINDE NGUNZA & ANOTHER V MICHAEL KIARIE & 12 OTHERS [2017] eKLR** where he stated:

*“I respectfully agree with Musyoka, J. in the Matter of the Estate of Veronica Njoki Wakagoto (deceased) [2013] eKLR that a purported sale of immovable property belonging to a deceased by any person, including the personal representative, without authority of a Confirmed Grant is illegal, invalid and criminal, as follows:*

*“In this matter the respondent sold property belonging to a dead person without authority as letter of administration had not yet been made him. The fact of having petitioned for the letters did not clothe him with any authority. He and Felix Kinuthia intermeddled with the estate, and they no doubt committed an offence under Section 45(2) (a) of the Act. It is unfortunate that the prosecutorial authorities in do not focus on offences of this kind as prosecutions are hardly ever mounted over them. This explains why property of dead persons is routinely intermeddled with.*

*As the respondent had no authority to sell the property in question, Felix Kinuthia acquired no interest in it at all as the seller had no title to it whatsoever. A buyer, such as Felix Kinuthia, is not in the same footing with a creditor, for the interest he alleges to have acquired in the estate was not acquired from the deceased during his lifetime or from a person authorized to sell the property. It should be noted that even where a grant of representation has been obtained, the grant holder has no power to sell any immovable asset before confirmation of the grant”.*

9. The sale of the deceased's property by his son David Ndirangu Marete was wholly illegal and indeed was a criminal act. This court cannot countenance such an illegal act. It would therefore follow that the protest raised by those who purchased land from David Ndirangu Marete must and does fail.

10. I have noted that the summons for confirmation of grant did not get the consent of the other beneficiaries of the deceased's estate. It follows that the just decision would be that the deceased's half

share of his property be held in trust by the petitioner on behalf of the other beneficiaries.

11. The orders of this court are as follows:

**(a) The protest by :**

**ZAKAYO KAIMENYI MUGWIKA,**

**DOROCAS NYENGERA MWANGI,**

**GERALD GITONGA M'INOTI,**

**MARY KIENDE,**

**ROBERT GATHAKA,**

**GIBSON GATOBU MUGAMBI,**

**PETER GITONGA RUTERE,**

**JAPHET KOOME MUNGATIA**

**LYDIA GATWIRI NDATHO and MORRIS MURIITHI MIRITI is hereby dismissed with no orders as to costs**

**(b) The protest by RODAH KIENDE MUKARIA and ROSE KANINI GATOBU is misplaced because it relates to the land of Arthur Mwangi Kang'au. The protest by these two is hereby struck out with no orders as to costs.**

**(c) The grant herein is hereby confirmed as follows:**

**The half share of the parcel of land being L. R. No. 5165/9 shall be held in trust by HANNAH NYAGUTHI MUNYIRI on behalf of herself and on behalf of:**

**JOYCE GATHONI KATHATO,**

**LEAH WANJIRA MBATIA,**

**CATHERINE NJERI MURIITHI,**

**MILKAH SATIRIA MARETE,**

**GLADYS NDUTA MUE AND**

**DAVID NDIRANGU MARETE.**

**Dated and Delivered at Nanyuki this 21<sup>st</sup> day of September 2017.**

**MARY KASANGO**

**JUDGE**

**CORAM:**

Before Justice Mary Kasango

Court Assistant – Njue/Mariastella

Petitioner: Hannah Nyaguthi Munyiri .....

Applicants .....

For applicants .....

**COURT**

Judgment delivered in open court.

**MARY KASANGO**

**JUDGE**