



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT EMBU**  
**MISC. CIVIL APPLICATION NO. 25 OF 2010**

BERNARD KATHANGA KARATHI..... APPLICANT

*VERSUS*

MARY WARUGURU MUNENE.....1ST RESPONDENT

JOB KARANI.....2ND RESPONDENT

**RULING**

1. A preliminary objection dated 15/10/2016 was raised by the respondent against the hearing of the applicant's application dated 17/02/2010. It was based on the grounds that the same was incompetent, bad in law an abuse of the due process of the court. Further there there was non-compliance with a the procedure because there is a pending succession cause in Kerugoya where this application ought to have been filed.
2. The objection was argued by way of written submissions. The 1<sup>st</sup> respondent was represented by R. Muthike Makworo & Co. Advocates while Mr. A. P. Kariithi represented the applicant. The 2<sup>nd</sup> respondent appeared in person and did not file submissions or in any way respond to the objection.
3. The application in issue is one for rectification of grant dated 17/02/2010. It seeks for orders to include one Bernard Kathanga Karathi the applicant herein as a co- administrator of the estate of the deceased Aurelious Ngari Karathi.
4. It goes on to challenge the grant issued on 13/01/2003 in favour of Mary Waruguru Ngari alias Mary Waruguru Munene. The applicant brought this application as a miscellaneous one without mentioning where and in which case the grant was issued. This was extreme ambiguity in his application.
5. The applicant in his submissions argues that the application ventilating his rights of inheritance but does not address the preliminary objection.
6. The respondent in his brief submissions argues that the application ought to have been filed in Kerugoya where the grant was issued in Principal Magistrate Succession Cause No. 21 of 2003.
7. Although the application is worded as an application for rectification of grant, the content is clear that the applicant is asking for revocation of grant so that the applicant is made a co-administrator. The rectification or objection ought to have been dealt with in the Kerugoya Succession cause.
8. As it stands, the application makes no reference to the Kerugoya case. It only mentions a grant made in favour of the applicant. Thanks to the 1<sup>st</sup> respondent who has shed some light as to the fact that the case

referred to was Kerugoya Succession Cause No. 21 of 2003.

9. This court can only entertain an appeal in the event that a party was aggrieved by the decision or orders of the Principal Magistrate court at Kerugoya. This is clearly not an appeal but an application that ought to have been filed in the main of the file Kerugoya Succession Cause.

10. I therefore find the application incompetent and bad in law. It is hereby struck out with no order as to costs.

11. The preliminary objection is hereby upheld.

12. It is hereby so ordered.

**DATED, DELIVERED AND SIGNED THIS 19TH DAY OF OCTOBER, 2017.**

**F. MUCHEMI**

**JUDGE**

**In the presence of:-**

**Mr. Karuthi for applicant**