



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT MERU**  
**SUCC. MISC. APPL. NO. 813 OF 2015**

**In the Matter of the Estate of M'mburugu M'rimerberia Alias MburuguRimberia (Deceased)**

**TERESIA KANUGU MUNYUA.....APPLICANT/INTERESTED PARTY**

**-VS-**

**LYDIA KARAMBURI MUGAMBI.....1<sup>ST</sup> RESPONDENT**

**THIURU MARK MUGAMBI.....2<sup>ND</sup> RESPONDENT**

**RULING**

**Discrimination of daughters in inheritance**

[1] I have been called upon to consider the application dated 9<sup>th</sup> June 2015 made by way of Summons for Revocation or Annulment of Grant. The significant orders sought therein are:

- (1) That the lower court's file in Chuka Principal Magistrate's Succession Cause No. 97 of 2012 be transferred to High Court of Kenya at Meru and be enjoined with this for disposal.***
- (2) That the grant of letters of administration issued to LYDIA KARAMBURI MUGAMBI and THIURU MARK MUGAMBI the Respondents herein be revoked or annulled.***
- (3) That transfers of L. R. No. Abothuguchi/Gitie/297, Abothuguchi/Gitie 247, Nkuene/Mitunguu/53 be cancelled and reverted to the Deceased's name.***
- (4) That this Honorable Court be pleased to issue an order of inhibition restraining any dealings whatsoever on L.R. No. Abothuguchi/Gitie/297, Abothuguchi /Gitie/247, Nkuene/Mitunguu/53 and all their sub-divisions until this application is heard and determined.***
- (5) That the costs of this application be provided for.***

The application is expressed to be brought under Sections 45, 47 and 76 of the Succession Act CAP 160 and Rules 44 of Probate and Administration Rules.

***Applicant's Claim***

[2] The Application is premised upon the following grounds:-

- (a) That the proceedings to obtain the grant were filed in Chuka court which did not have

jurisdiction as the subject matter is in excess of Kshs. 10 Million. At the time, the jurisdiction of magistrate's court was limited to Kshs. 100,000.

(b) That the grant was obtained by means of untrue allegation of facts essential in point of law. The grant was obtained secretly with the sole purpose of committing fraud as the nearest subordinate court is at Nkubu. The Applicant has been farming part of the estate and is now being evicted by the purchasers.

[3] The Applicant amplified the foregoing grounds of the application through averments in her affidavit in support wherein she deposes that the Deceased is her father who died on 18<sup>th</sup> October 1996 leaving only her as the surviving child. She stated that the 1<sup>st</sup> Respondent is not the widow of the Deceased and the 2<sup>nd</sup> Respondent is not the son. The 1<sup>st</sup> Respondent is her brother's wife (widow) and the 2<sup>nd</sup> Respondent is her brother's son. The two misdirected the court and committed perjury in order to steal her inheritance from her (*Form 9 which is annexure T.K.M 1*). The Applicant further averred that the Respondents did not mention her anywhere in the documents they filed despite the fact that she was using the biggest chunk of the estate. According to her, the estate should be shared equally between her and her brother, STANLEY MUGAMBI who is deceased. The Respondents should therefore take the share due to her brother but not the whole land. The Applicant stated that she came to know about this cause when a purchaser contacted her and with the help of the Respondents asked her not to use her father's land again as it had changed hands.

[4] In her submissions dated 6<sup>th</sup> January 2016 the Applicant submits that the Deceased left behind the following properties:

1. L. R. No. Abothuguchu/Gitie/247
2. L. R. No. Abothuguchi/Gitie/297
3. L. R. No. Nkuene/Mitunguu/53

The first two parcels of land are in Central Imenti sub-county while the last one is in Imenti South sub-county. These properties are under the jurisdiction of Nkubu or Githongo Law Courts if the monetary jurisdiction did not count. Most of the other people mentioned as the beneficiaries apart from the Respondents were persons who purchased land from the Respondent. To her the grant was obtained secretly and through fraud for they are not a widow and son of the Deceased as falsely swore at Chuka court. One of the purchasers, Josphat Gitonga Mugwika filed his agreement at the Magistrate's court at Chuka (*Annexure A*). He was buying 5 Acres of L. R. No. Nkuene/Mitunguu at the price of Kshs. 1,740,000. Her brother STANLEY MUGAMBI having predeceased his father distribution should go in accordance with the provisions of Section 38 of the Law of Succession Act. In spite of that, she prays that distribution be in equal shares for the sake of his widow and children. That costs be provided for due to the fraudulent behavior of the Respondents.

### ***Respondents' default***

[5] The Respondent did not file any replying affidavit or submissions to refute the application despite being given various opportunities by the court to do so.

### **DETERMINATION**

#### **Chuka succession file part of record**

[6] First things first. By order of court issued on 8<sup>th</sup> October 2017, Succession file No 97 of 2012 filed at Chuka was transmitted to this court. I now order it be part of these proceedings.

### **Jurisdiction is everything**

[7] Thesweetest canticle ever to be composed on jurisdiction was by Nyarangi JA in the famous **Lilian ‘S’ Vessel** case that;

***‘Jurisdiction is everything’.***

It has been urged in this case that Chuka magistrate court lacked jurisdiction to preside over this estate as it did in cause No 97 of 2012. The relevant law here is Section 48(1) of Cap 160 which states that:

***“(1) Notwithstanding any other written law which limits jurisdiction, but subject to the provisions of section 49 of this Act, a Resident Magistrate shall have jurisdiction to entertain any application other than an application under section 76 of this Act and to determine any dispute under this Act and pronounce such decrees and make such orders therein as may be expedient in respect of any estate the gross value of which does not exceed one hundred thousand shillings:***

***Provided that for the purpose of this section in any place where both the High Court and a Resident Magistrate’s Court are available, the High Court shall have exclusive jurisdiction to make all grants of representation and determine all disputes under this Act.”***

[8] At the time of the filing of the cause, the jurisdiction of magistrate’s court in succession causes was limited to estate whose gross value does not exceed Kshs. 100,000. In this case, the Deceased had three properties:

1. L. R. No. Abothuguchu/Gitie/247
2. L. R. No. Abothuguchi/Gitie/297
3. L. R. No. Nkuene/Mitunguu/53

The Respondent in the P & A.5 form gave the value of the Deceased estate to be Kshs. 100,000 and liabilities to Josphat Gitonga as Kshs. 100,000. I am aware that no valuation was submitted to this court. However, I will not scorn details as there are some important pieces of information that would assist. For instance; Land parcel No. L. R. Nkuene/Mitunguu/53 was sold to the said Josphat Gitonga Mugwika by the 1<sup>st</sup> Respondent for a consideration of Kshs. 1,740,000 and the Applicant produced the agreement which was filed in court at Chuka as one of her attachments in her submissions. Again, Land parcel L. R. No. Nkuene/Mitunguu/53 is shown in the green card to be approximately 5.17 Ha (*approximately 12.76 Acres*). From the grant, L. R. No. Abothuguchu/Gitie/247 is approximately more than 1.35 Acres. Except, the acreage of L. R. No. Abothuguchi/Gitie/297 has not been ascertained. With this information, nothing could be further from the truth like stating that this estate is of a value not exceeding Kshs. 100,000. The court is able to state without any fear of contradiction that the total value of these assets exceeded the value stated by the Respondents of Kshs. 100,000. I am tempted to say that the value stated by the Respondents was intended to clothe the court at Chuka with jurisdiction; something that is unfortunate and should be resisted. On that ground alone the grant will be revoked.

[9] Quite apart from the foregoing, there are other factors which render this grant a candidate for revocation. The chief’s letter dated 27<sup>th</sup> January 2011, lists the Applicant and three other persons to be daughters of the Deceased. It has not been disputed that the Applicant is the only surviving child of the deceased yet she was left out of the estate. See the affidavit in support of petition for letters of administration intestate (Form P & A.5) in which it is stated that the Deceased died intestate and left behind the following surviving him:

- a) Mark Thiutu Mugambi - Son
- b) Eric Gatobu Mugambi – Son
- c) Dickson Mugira Mugambi – Son

- d) Samuel Gitonga – Son
- e) Isaak Maina – Son
- f) Kennedy Muriira – Son (Minor)
- g) JosphatGitonga – Interested Party
- h) Lydia KaramuriMugambi – widow
- i) JosphatMuroriMuriithi – Interested Party

[10] It is potent argument that the Applicant was not mentioned anywhere despite being the daughter of the Deceased. Yet, it was not shown that she renounced her right to apply for letters of administration or to inherit the estate. Discrimination against women is real and rife. And when courts of law talk against it, they are not engaged in mere succession of echoes; they offer real solutions thereto. Accordingly, I have stated before and I wish to restate the following sentiments in a work of court **IN THE MATTER OF THE ESTATE OF M'NGARITHI M'MIRITI ALIAS PAUL M'NGARITHI M'MIRITI (DECEASED) [2017] eKLR** on the subject that:-

**Discrimination of daughters in inheritance**

*From the arguments coming through, it is clear issues to do with discrimination based on gender and sex have emerged. There were bad times in the heavily patriarchal African society; that being born as daughter disinherited you. And so, even the judicial journey to liberate daughters from being so down-trodden by the patriarchal society in Kenya on matters of inheritance has been long and painful. As a matter of fact, due to the constitutional architecture of our nation at the time, before 2010, we only saw pin-prick thrusts and rapier-like strokes by courts on these persistent patriarchal biases. But, things changed when RONO vs. RONO [2008] 1 KLR 803 delivered the downright bludgeon-blow on these discriminatory practices against women in inheritance; it splendidly paid deference to the international instruments against all forms of discrimination against women especially the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). And, I am happy to say that from thence, there are many cases- and the number is rising by the day as courts implement the Constitution- which state categorically that discrimination in inheritance on the basis of gender or sex or status is prohibited discrimination in law and the Constitution. More specifically I am content to cite the proclamation by the Court of Appeal in the case of STEPHEN GITONGA M'MURITHI vs. FAITH NGIRAMURITHI [2015] eKLR that:-*

*“Section 38 enshrines the principle of equal distribution of the net intestate estate to the surviving children of the deceased irrespective of gender and whether married and comfortable in their marriage or unmarried...”*

*Therefore, a son will not have priority over a daughter of the deceased simply because he is male; all- male and female siblings- are equal before the law and are entitled to equal protection of the law. See article 27 of the Constitution.*

[11] Therefore, there are enough grounds which strike just the right note to revoke this grant under section 76 for the reasons that:

- (a) The proceedings to obtain the grant were defective in substance;*
- (b) The grant was obtained fraudulently by the making of a false statement or by the concealment from the court of something material to the case; and*
- (c) The grant was obtained by means of an untrue allegation of a fact essential in point of law to*

*justify the grant notwithstanding that the allegation was made in ignorance or inadvertently.*

Accordingly, I revoke the grant.

[12] I am aware, however that on 28<sup>th</sup> September 2016 Mutegi, advocate for the Respondents, stated that they intended the 1<sup>st</sup> Respondent and the Applicant to be joint administrators of the estate. In the upshot I make the following specific orders:-:

- 1. That the grant of letters of administration issued to LYDIA KARAMBURI MUGAMBI and THIURU MARK MUGAMBI the Respondents herein is hereby revoked.***
- 2. That transfers of L. R. No. Abothuguchi/Gitie/297, Abothuguchi/Gitie 247, Nkuene/Mitunguu/53 be cancelled, amalgamated into one estate property which shall revert back into the Deceased's name.***
- 3. That I appoint the 1<sup>st</sup> Respondent and the Applicant as joint administrators of the estate.***
- 4. That the joint administrators shall apply for confirmation within 30 days of today.***
- 5. That costs of this application shall be borne by the Respondents.***

Dated, signed and delivered in open court at Meru this 19<sup>th</sup> day of October 2017

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**F. GIKONYO**

**JUDGE**