



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

FAMILY DIVISION

SUCCESSION CAUSE NO.664 OF 2001

**IN THE MATTER OF THE ESTATE OF RICHARD MBUKO MUGERA ALIAS MBUKO
MUGERA (DECEASED)**

FLORA MBUKO..... APPLICANT

VERSUS

MICHAEL NJAGI MBUKO..... RESPONDENT

RULING

1. The deceased Mbuko Mugeru died intestate on 5th April 1986 at Embu. He was survived by two widows Susan Muthoni Mbuko and Flora Mbuko (the applicant). He left 13 adult children who included the respondent Michael Njagi Mbuko who is the eldest son. He left land parcel 3407 Gaturi/Githimu (which is located within Embu Municipality), Plot No. 996 Mbeti/Gachoka which measures 10 acres, and two kiosks in Embu Municipality. They are Old Market No.14 (Marigithi) and Market Road side Kiosk. The respondent petitioned for grant of letters of administration and was issued on 24th May 2001. The grant was confirmed on 15th April 2002. The confirmation was, according to the record and evidence of the respondent, consented to by the applicant. Susan got Parcel No. 3407 Gaturi/Githimu and Old Market No. 14 (Marigithi) and the applicant got parcel 996 Mbeti/Gachoka and Market Road Side Kiosk.

2. On 16th October 2002 the applicant sought that the grant issued and confirmed to the respondent be revoked and or annulled. She was basically saying that the petition for grant was done without her knowledge, and that even the confirmation was done without her consent and consultation. She stated that she learnt of the matter when she was served with copy of Certificate of Confirmation. Her case was that she was always lived on parcel 3407 with her co-wife; that the property is within Embu Municipality; and, yet, all that parcel had been given to her co-wife and she had been given parcel 996 which is situated in Mbeere. She stated that she had developed her portion on 3407 by having a house and had planted fruits and coffee. The replying affidavits were sworn by the respondent, Susan Muthoni Mbuko, Magdalene Gichugu Mbuko, Mercy Njoki Mbuko, Njiru Mbuko, Faith Wanjira Mbuko, Beatrice Ngina Mbuko, Francis Mugo Mbuko and John Njue Mbuko. They opposed the application and said that the applicant was always aware of the petition and confirmation.

3. The applicant and the respondent testified on the application. The applicant called Peter Njeru Njuri

(PW 2) and Njeru Njiru (PW 3).

4. It should be pointed out that on 2nd July 2014 the parties appeared before Justice Kimaru and a consent was recorded that the three (3 acres) in 3407 be shared into 13 equal units so that Susan's house gets 8 units and the applicant's house gets 5 units. It was agreed that the rest of the estate be shared by the court. I find that the consent compromised the complaint of the applicant as contained in her application for revocation. Through her five children she will benefit from parcel 3407. It follows that the fairest way of dealing with the 10 acres comprised in 996 is to have the two widows and the 13 children each have an equal share of the land. It is so ordered. As for the kiosks (and they are temporary and on licence from the Municipality), I direct that Susan shall have Old Market No. 14 (Marigithi) and the applicant shall have Market Road Side Kiosk.

5. In those terms, the certificate of confirmation is ordered to be amended. Each side shall bear own costs.

DATED and SIGNED at NAIROBI this 25TH day of FEBRUARY 2016.

A.O. MUCHELULE

JUDGE

DELIVERED at NAIROBI on the 29TH day of FEBRUARY 2016.

W. MUSYOKA

JUDGE