

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT EMBU

SUCCESSION CAUSE NO. 140 OF 2006

IN THE MATTER OF THE ESTATE OF KABURACHI PETER (DECEASED)

BETH GICUKU PETER.....APPLICANT

VERSUS

CECILY WANJIRU KARIUKI

PETER NJAGI NJERURESPONDENTS

RULING

1. Beth Gicuku Peter, the applicant has applied to the court to revoke the confirmed certificate of grant issued in favour of both respondents. According to her the respondents gave false information to the court in stating that Kaburachi Peter and Jediel Njeru Peter referred to one and the same person. It was her evidence that these were two different persons. In her affidavit evidence, she has stated that Kaburachi Peter was born in February 1955 and died at the age of 9 years, while Jediel Njeru Peter was born in 1959 and died at the age of 34 years. It is also her evidence that Kaburachi Peter and Jediel Njeru Peter were her biological sons. And that during the first registration of land her late son Kaburachi Peter was given land reference number Kyeni/Kigumo/1211 by the clan during the adjudication process.
2. Furthermore, she also testified that Jediel Njeru Peter was then only one year old, when the process of adjudication was going on. Jediel Peter Njeru was not given any land by the clan. She also testified that Jediel Njeru Peter was never known by an alias name of Kaburachi Peter. More importantly, she stated that the first respondent is the wife of her son Jediel Njeru Peter and the second respondent is the elder son of the first respondent.
3. She further testified that the two respondents filed this succession cause secretly and without her knowledge and participation. When this cause came up for hearing on 25th November 2015 the trial proceeded ex-parte. I found that the respondents were properly served with the hearing notice. I also found that they had adequate notice of the hearing date. For reasons known to the respondents, they never turned up for the trial of this cause.
4. In terms of **section 76 of the Law of Succession Act (Cap 160)** I find that the respondents gave false information that Jediel Njeru Peter was also known as Kaburachi Peter with the sole purpose of defrauding the applicant. I further find that it is only Kaburachi Peter who was the owner of land reference Kyeni/Kigumo/1211 which had been given to him by the clan. I also find as a fact that Kaburachi Peter died without having any child or dependants.
5. In the circumstances, I find that the applicant has proved her case on a balance of probabilities. And for that reason I hereby revoke the grant issued in favour of the respondents.
6. As regards costs I make no order in that regard because the parties are members of the same family.

RULING DATED, SIGNED and DELIVERED in open court at **EMBU** this 14th day of April **2016**

In the presence of Ms Muriuki holding brief for Mr. Ithiga for the Applicant and in the absence of both Respondents.

Court clerk Njue.

J.M. BWONWONGA

JUDGE

14/04/2016