



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**MILIMANI LAW COURTS**  
**FAMILY DIVISION**

**SUCCESSION CAUSE NO. 743 OF 1990**

**PETER MWAI MUTUGI.....APPLICANT**

**VERUS**

**MONICA WAMBUI MUTUGI.....1<sup>ST</sup> RESPONDENT**

**LABANSON MAINA MUTUGI.....2<sup>ND</sup> RESPONDENT**

**JUDGMENT**

1. The applicant Peter Mwai Mutugi filed this summons dated 28<sup>th</sup> May 2012 seeking to have the grant of letters of administration intestate issued to the 1<sup>st</sup> respondent Monica Wambui Mutugi and the 2<sup>nd</sup> respondent Labanson Maina Mutugi and confirmed on 4<sup>th</sup> October 1991 revoked and or annulled as the grant was defective in substance. In the affidavit sworn by the applicant to support the summons he stated that in filing the petition the respondents had indicated that the only beneficiaries of the estate of the deceased were Monica Wambui Mutugi (widow), Lucy Wairimu (2<sup>nd</sup> widow), Labanson Mutugi (son) and Mwangi Mutugi (son). Yet, the deceased had other children as follows:-

- a. Teresia Wanjiru (of the 1<sup>st</sup> house); and
- b. Polly Wanjiru;
- c. Catherine Wanjiku;
- d. Peter Mwai;
- e. Elizabeth Nyambura;
- f. Mary Wanjira;
- g. Charles Mwarari; and
- h. Margaret Kagendo; all of the 2<sup>nd</sup> house.

These beneficiaries were allegedly not indicated, were not cited and were not provided for in the

distribution of the estate. In a further supporting affidavit sworn on 27<sup>th</sup> October 2016 the applicant complained that in the certificate of confirmation property Kiini/Nyangio/238 not belonging to the deceased had been included. It is notable that in the certificate of confirmation it was indicated that the deceased's estate comprised of parcels Waraza/Kabaru/37 and Kiini/Nyangio/238 which were ordered to each be shared equally between Monica Wambui Mutugi (1<sup>st</sup> respondent) and Lucy Wairimu Mutugi. The applicant's case was that he was one of the sons of the deceased who had not been included, or provided for, and that he was the registered proprietor of land parcel Kiine/Nyangio/238, and therefore the parcel was not available for distribution as it did not belong to the deceased. He stated that the deceased had on 7<sup>th</sup> October 1964 transferred the parcel to him as a gift. He annexed evidence of the transfer.

2. The summons was not opposed as no replying affidavit was filed. There was service of the summons. It is evident from the file that the deceased Onesmus Mutugi Muraguri died intestate on 24<sup>th</sup> July 1985. He left two widows:- the 1<sup>st</sup> respondent and Lucy Wairimu Mutugi. The 1<sup>st</sup> respondent had two children: the 2<sup>nd</sup> respondent and Teresia Wanjiru Mburi. The 2<sup>nd</sup> house of Lucy Wairimu Mutugi had nine (9) children as follows:-

- a. Polly Wanjiru Mutugi;
- b. Francis Mwangi Mutugi;
- c. Catherine Wanjiku Mutugi;
- d. Peter Mwai Mutugi;
- e. Mary Wanjiru Mutugi;
- f. Elizabeth Nyambura Mutugi;
- g. Charles Mwarari Mutugi;
- h. Margaret Kagendo Mutugi; and
- i. Eunice Wangari Mutugi.

The parcel of land in the deceased's name was Nyeri/Waraza/37 that measured 13Ha (about 37 acres). It has been indicated in the foregoing that parcel Kiine/Nyangio/238 was not in the deceased's name. It was unlawful to include it in the distribution. It is also noticeable from the file that this parcel of land was the subject of litigation between the 1<sup>st</sup> respondent and the applicant in Kerugoya SRM No. 59 of 1986 (and High Court at Nairobi CC No. 407 of 1993), and the dispute has not been resolved. The dispute was whether the deceased registered the land in the name of the applicant to hold in trust for him, or whether the transfer and registration was absolute. It is clear that by the time of the filing of this succession cause the dispute had not been resolved, and therefore the parcel was not the free property of the estate of the deceased.

3. Lastly, under **rule 7(1)(e)** of the **Probate and Administration Rules** of the **Law of Succession Act (Cap 160)** a petition for grant of representation shall have the names of all surviving spouses and children of the deceased. This was not done in this case, and there was no explanation for the omission. There was no evidence of citation to the applicant or to his siblings. The petition was substantially defective.

4. The result is that the grant and confirmation were defective in substance. I order that the grant issued to the respondents on 14<sup>th</sup> February 1991 and confirmed to them on 4<sup>th</sup> October 1991 in respect of the estate of the deceased Onesmus Mutugi Muraguri be revoked.

5. So that this old matter can be expedited, I order a fresh grant of letters of administration intestate to

issue jointly to Labanson Maina Mutugi and Peter Mwai Mutugi. These grantees, or any of them, shall be at liberty to apply for the confirmation of the grant within forty-five (45) days. I make no order as to costs.

**DATED and DELIVERED at NAIROBI this 16<sup>th</sup> day of NOVEMBER 2016.**

**A.O. MUCHELULE**

**JUDGE**