



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**MILIMANI LAW COURTS**  
**FAMILY DIVISION**  
**SUCCESSION CAUSE NO. 236 OF 2010**

**IN THE MATTER OF THE ESTATE OF MUKORA MUKII (DECEASED)**

**JOSEPHAT MWANGI MBUTHIA.....1<sup>ST</sup> OBJECTOR/APPLICANT**

**WILFRED MUKORA MBUTHIA.....2<sup>ND</sup> OBJECTOR/APPLICANT**

**VERSUS**

**MICHAEL P. MUKORA MUKII.....1<sup>ST</sup> PETITIONER/RESPONDENT**

**MICHAEL MUKII MUKORA.....2<sup>ND</sup> PETITIONER/RESPONDENT**

**JUDGMENT**

1. The deceased Mukora Mukii died intestate on 8<sup>th</sup> August 1978. The petition for grant of letters of administration intestate was filed in the Chief Magistrate's Court at Kiambu in Succession Cause of 158 of 2001. The grant was issued to the petitioners on 28<sup>th</sup> August 2001 and confirmed on 12<sup>th</sup> October 2009. The deceased left two parcels of land, namely Githunguri/Riuki 276 and Githunguri/Riuki 407. In the confirmation, parcel 276 was shared as follows:-

- a. Michael P. Mukora Mukii (1<sup>st</sup> petitioner) .....5.955 acres;
- b. Michael Mukei Mukora (2<sup>nd</sup> petitioner)..... 4.455 acres;
- c. Maria Wakio Mukora.....4.455 acres; and
- d. Aloys Kamau Mukora .....4.455 acres.

Parcel 407 was shared as follows:-

- a. Michael P. Mukora Mukii (1<sup>st</sup> petitioner) .....0.395 acres;
- b. Michael Mukei Mukora (2<sup>nd</sup> petitioner)..... 0.395 acres;
- c. Maria Wakio Mukora.....0.395 acres;
- d. Aloys Kamau Mukora .....0.395 acres; and
- e. Hannah Wangui Kiguta.....0.25 acres.

2. On 11<sup>th</sup> February 2010 the objectors filed summons for the revocation and/or annulment of the grant. The grounds were that:-

- a. the proceedings leading to the grant were defective in substance;
- b. the grant was fraudulently obtained before the Kiambu court which court had no jurisdiction to handle it and that the petitioners concealed material facts; and
- c. the petitioners have failed to diligently administer the estate of the deceased and had failed to produce to court a true inventory showing the value of the assets of the estate.

In the affidavit sworn by the objectors, they complained that the petitioners had not disclosed all the survivors and/or beneficiaries of the deceased at the time of petitioning for grant and had gone ahead to exclude some of the survivors/beneficiaries from inheriting the estate. They stated that the confirmation and distribution had not been agreed upon by all the heirs of the deceased. Their mother was a daughter of the deceased and had filed objection to the confirmation, the objectors said, but had died before the hearing of the same. The result was that the confirmation had been done without the objector being heard. Upon her death, they had taken over the objection. Lastly, they claimed that the estate was in excess of Kshs.100,000/= and therefore beyond the monetary jurisdiction of the trial court.

3. The 1<sup>st</sup> petitioner swore a replying affidavit to say that the objectors' mother participated in the proceedings before Kiambu Court and at no time was the issue of jurisdiction raised. The petitioners agreed that the objectors' mother Hannah Muthoni (a daughter of the deceased) had an objection pending before the court and that she died before the same was heard. They stated that the objection was not prosecuted because her advocates failed to come to court. The grant was confirmed and the distribution done. Neither Hannah nor her children (the objectors) were provided for in the distribution. The petitioners' case is that Hannah was a married daughter of the deceased and, under Kikuyu customary law, she could not inherit from the estate of the deceased. It followed that the objectors who were the children would also not benefit from the estate. The application for revocation was opposed on these grounds.
4. Both the 1<sup>st</sup> petitioner and 2<sup>nd</sup> objector gave evidence, each in support of his case. I have considered that evidence.
5. Before dealing with the substantial complaint by the objectors, I will briefly consider the issue regarding the jurisdiction of the magistrate's court to handle the Cause. It is clear that under **section 48 of the Law of Succession Act (Cap. 160)**, the court's jurisdiction was limited to handling an estate whose value did not exceed Kshs.100,000/=. In the affidavit sworn by the petitioners in support to the petition for letters of administration intestate that was filed on 13<sup>th</sup> July 2001 the value of the estate was estimated at Kshs.100,000/=. In the affidavit that was sworn objecting to the confirmation no issue was raised about this estimate. The affidavit was sworn by Mumbi Mukora (mother of Hannah) who was one of the widows of the deceased. The court therefore proceeded on the estimate. Parcel 276 is about 19 acres. It is situate in Riuki in Githunguri in Kiambu. It would certainly be in excess of Kshs.100,000/= in value. But there was no valuation of the land and this issue did not feature before the court. It cannot be raised here under the circumstances.
6. From the evidence and the affidavits filed it is clear that the deceased had seven widows. They were:
  - a. Wambui Mukora who had had children namely Mary Wakio and Elizabeth Njambi;
  - b. Mumbi Mukora who had the child Hannah Muthoni Mbuthia (the mother of the objectors);
  - c. Mwithia Mukora who had one child (2<sup>nd</sup> petitioner);
  - d. Nyakeru Mukora who had three children namely Peter Maina Mwaura, Wanjiru Mukora and 1<sup>st</sup> petitioner;
  - e. Serah Njeri who had five children namely Francis Mukii Mukora, Peter Maina Mukora, Aloyce Kamau Mukora, Nyakio Mukora and Ngendo Mukora;
  - f. Njeri Mugo who had no child; and
  - g. Gachambi Mukora who had no child.

7. The petition filed shows that Mumbi Mukora consented to the filing of the same. However, she filed an affidavit to challenge the confirmation of grant and denied that she was the owner of the thumbprint on the affidavit in support of the petition. She denied the consent. She further stated that the distribution in the application for confirmation had not been agreed upon. These were serious contentions that required resolution. She was represented. She died before her objection was heard. An application was successfully made to get her daughter Hannah to step in her shoes to prosecute the application. Hannah also died before the objection was heard. By the time the grant was confirmed the objection was still pending. Without going into the merits of the objection, it is clear that the confirmation was done without hearing Hannah. Whatever claim that her mother, and herself, had to the estate was consequently not adjudicated upon. Better still, Mumbi Mukora was the deceased's widow and therefore a beneficiary. She represented one of the houses of the deceased. Her consent was required before the estate was distributed at the confirmation. **Section 51** of the **Act** required that the beneficiaries be disclosed at the filing of the petition (**In the matter of the Estate of Mwaura Mutungi alias Mwaura Gichigo Mbura alias Mwaura Mbura (Deceased) Nairobi H.C Succ. Cause No. 935 of 2003**). Even if Mumbi was disclosed, Hannah was not. She was the deceased's child. **Section 51(g)** of the **Act** requires that:-

**“in cases of total or partial intestacy, the names and addresses of all surviving spouses, children, parents, brothers and sisters of the deceased, and of the children of any child or his or hers then deceased”**

should be given by the petitioner when filing the petition.

Further, **rule 7** of the **Probate and Administration Rules** confers a mandatory duty on the applicant to disclose all surviving children of the deceased. In respect of Hannah, this was not done. Under **section 76(b)** of the **Act** failure to disclose a beneficiary in the petition is a material matter that should lead to the revocation of the grant (**In the Estate of Ezekiel Mulanda Masai, Eldoret High Court Probate and Administration 4 of 1992**). It should be recalled that Hannah, being a daughter of the deceased, was a person of equal priority whose consent was required. (**In the Matter of the Estate of Marioko Njeru Migwi (Deceased) [2014]eKLR**). She had not renounced her right to petition for the grant. It follows that the proceedings leading to the grant were defective in substance, and therefore the grant should be revoked (**In the Matter of the Estate of Muriranja Mboro Njiri, Nairobi H.C. Succ. Cause No. 890 of 2003**).

8. Mr Muhia for the petitioners raised the issue that the deceased died in 1948, and the **Law of Succession Act** came into operation on 1<sup>st</sup> July 1981, and therefore that the law applicable to the estate was Kikuyu customary law (**section 2(2)** of the **Act**). Counsel argued that under Kikuyu custom, Mumbi Mukora was only entitled to a life interest in land, and because Hannah was a married daughter she could only inherit the estate of her father. The response by Mr Gichohi for the objectors was that there was evidence that Hannah had divorced her husband and, together with the children, returned to her father's home where she was buried when she died. She was therefore entitled. The 1<sup>st</sup> petitioner testified that Hannah was not divorced. However, he was cross-examined to admit that when she died she was buried on her father's land (parcel 276). The reason was that she had nowhere to be buried. He (1<sup>st</sup> petitioner) did not object to the burial. This fact of burial on her father's land, and not on the land of her husband, would support the objectors' case that she had been divorced. These were some of the issues to be determined before confirmation. Whatever the case, a custom that condemns a woman and denies her the right to benefit from her father's estate because she is married would straightaway offend **Articles 20** and **27** of the Constitution of Kenya 2010. The court would not allow Hannah to be discriminated upon on account of her marital status. The objectors have to be allowed to pursue their late mother's claim to the estate of the deceased.

9. In conclusion, the application dated 10<sup>th</sup> February 2010 is allowed with costs. The grant issued to the petitioner on 28<sup>th</sup> August 2001 and confirmed on 12<sup>th</sup> October 2009 is hereby revoked. There will be a fresh grant of letters of administration intestate in the joint names of Michael P. Mukora

Mukii and Michael Mukii Mukora and Josephat Mwangi Mbuthia. These three and the other beneficiaries shall be at liberty to discuss and agree on fresh distribution. Otherwise, they shall be at liberty to file application for confirmation after the expiry of thirty (30) days from today.

**DATED and DELIVERED** this 22<sup>nd</sup> day of **September 2015**.

**A.O. MUCHELULE**

**JUDGE**