



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT EMBU**  
**SUCCESSION CAUSE NO. 348 OF 2002**

IN THE MATTER OF ESTATE OF MUNA MWERA.....DECEASED

AND

TARASILA MWAURA & 2 OTHERS ..... APPLICANTS

VERSUS

JOSEPH MBOGO MUNA .....RESPONDENT

AND

MUCHIRA JUSTUS MUNA & 7 OTHERS ..... INTERESTED PARTY

**R U L I N G**

This is the summons for revocation of grant dated 31<sup>st</sup> October 2011 filed by Tarasila Mwaura, Elizabeth Kanini Njogu and Zipporah Muthoni Njuki, who are some of the deceased's daughters. The grounds cited by them are as follows;

- i. That the grant was obtained fraudulently by making of a false statement or by concealment from the Court of something material to the case.
- ii. That the grant has become useless and inoperative through subsequent circumstances.

The application is supported by an affidavit filed by Tarasila Mwaura on her own behalf and on behalf of her two sisters (2<sup>nd</sup> and 3<sup>rd</sup> Applicants). The main complaint is that the estate is not being distributed in accordance with the confirmed grant and that the daughters have not been given any share. She also filed a supplementary affidavit. The Respondent (Joseph Mbogo Muna) who is the administrator has not filed any replying affidavit. Instead a replying affidavit has been filed by one ***Muchira Justus Muna*** one of the beneficiaries and Interested Party. In it he requests to be made the administrator as Joseph Mbogo Muna is unfit to be the administrator.

Ms Rose Njeru for the Applicants filed written submissions in which she is asking this Court to set aside the confirmation proceedings and have the estate distributed afresh, as some of the beneficiaries were left out.

On the other hand the Respondent in his submissions supports the case of the Applicants who he says were not given any share of their father's estate. Mr.Njage for the Interested Parties submitted that no

fraud had been proved as required by law Ref: **PATEL-V- MAKANYI [1957] E.A. 314**. He further submitted that the shares in the confirmed grant have already been vested in the named beneficiaries.

I have considered all the affidavits and the submissions filed herein. Upon perusal of this record the following comes out clearly;

- The deceased Muna Mwara was the registered proprietor of L.R. NGARIAMA/NYANGENI/444.
- The initial administrator was the deceased's widow Dorcas Muringo Muna who died on 7/4/2004 before the grant was confirmed.
- She was substituted by her sons Joseph Mbogo Muna and Muchira Justus Muna. The grant was then confirmed on 21/5/2009 in the following manner;

LAND PARCEL NO.NGARIAMA/NYANGENI/444 to be shared as follows;

1. DORCAS MURINGO MUNA - 1 ACRE
2. JOSEPH MBOGO -  $\frac{3}{4}$  ACRE
3. RICHARD MUGO -  $\frac{3}{4}$  ACRE
4. PAUL MUTURI -  $\frac{3}{4}$  ACRE
5. MUCHIRA MUNA -  $\frac{3}{4}$  ACRE
6. JOHN MUGO -  $\frac{3}{4}$  ACRE

Inspite of the fact that as at the time of confirmation the administrators were Joseph Mbogo Muna and Muchira Justus Muna the certificate of confirmation filed shows the administrator as **Dorcas Muringo Muna** which is an error.

- Joseph Muna was entitled to  $\frac{3}{4}$  acre. He sold  $\frac{1}{2}$  acre to Cyrus Muriithi Kiura and  $\frac{1}{4}$  acre to Geoffrey Muriuki Muchira.
- Paul Muturi Muna was entitled to  $\frac{3}{4}$  acre and he has sold  $\frac{1}{4}$  acre to Danson Njeru Kaboro
- Dorcas Muringo Muna was entitled to 1 acre. She sold  $\frac{1}{4}$  an acre to AIPCA Church Kiamutugu. All these sales are supported by sale agreements filed herein.
- Dorcas was the 1<sup>st</sup> administrator in this estate. When she died in 2004 Joseph Muna and Muchira Justus Muna were substituted in her place. It is therefore clear that they bought these lands from administrators of an estate and are therefore protected under section 93 of the Law of Succession Act Cap.160.

There is no evidence that Justus Nyaga and James Bundi Muchira bought any land from the administrators. The sale agreements filed show that the sales were conducted between the years 2000 – 2002. The Grant was confirmed on 21/5/2009 as per the schedule of distribution dated 30/10/2001. The sales were from the individual shares of Joseph, Dorcas and Paul.

The chief's letter dated 14/11/2000 shows the following as the deceased's sons;

- Joseph Mbogo Muna
- Muchira Muna
- Paul Muturi Muna
- John Mugo Muna
- Richard Mugo Muna

Each of these sons was to get  $\frac{3}{4}$  acre of land as per the certificate of confirmation. The said letter shows that the deceased had five (5) married daughters. It does not however show the names of the Applicants. It's not also disputed that the Applicants are the daughters of the deceased. The Applicants' desire is to

have a share of their father's estate and rightly so. At this point it would not be just to redistribute the estate especially considering that some beneficiaries have already sold their shares especially Joseph who has sold his whole share. Secondly the Applicants have not shown that there was any fraud when the said grant was issued. In form P&A 5 their mother indicated their names. So they were recognized as beneficiaries. It's clearly noted that after selling  $\frac{1}{4}$  acre of her share Dorcas remained with  $\frac{3}{4}$ . That will go to the Daughters.

And because of the errors that were made in that no grant was issued in the names of the two administrators, I will revoke the grant herein and issue the following orders;

1. A fresh grant to issue in the names of Joseph Mbogo Muna and Muchira Justus Muna as ordered on 21/5/2009.
2. The said grant to be confirmed as per the following schedule in land No.NGARIAMA/NYAGENI/444
  - Richard Mugo Muna  $\frac{3}{4}$  acre
  - Paul Muturi -  $\frac{1}{2}$  acre
  - Muchira Justus Muna -  $\frac{3}{4}$  acre
  - John Mugo Muna -  $\frac{3}{4}$  acre (to be held by the two
    - Administrators in trust for him)
  - Cyrus Muriithi Muchira -  $\frac{1}{2}$  acre
  - Geoffrey Muriuki Muchira -  $\frac{1}{4}$  acre
  - Danson Njeru Kaboro -  $\frac{1}{4}$  acre

The Applicants **TARASILA MWAURA, ELIZABETH KANINI NJOGU & ZIPPORAH MUTHONI NJUKI** to receive  $\frac{3}{4}$  acre to hold in trust for themselves and their sisters.

The AIPCA Church Kiamutugu -  $\frac{1}{4}$  acre

It should be noted that Joseph's share has gone to the two purchasers, while  $\frac{1}{4}$  acre of Paul's share has gone to Danson and  $\frac{1}{4}$  acre of Dorcas's share has gone to A.I.P.C.A. Church. The administrators should act fast to ensure the estate is distributed. And if any beneficiary has sold part of his share he will transfer it after his share is officially transferred to him.

Each party to bear his/her own costs.

Orders accordingly.

**DATED, SIGNED AND DELIVERED IN OPEN COURT AT EMBU THIS 4<sup>TH</sup> DAY OF APRIL 2014.**

**H.I. ONG'UDI**

**J U D G E**

In the presence of;

M/s Wairimu for M/s Njeru for Applicant

Mr. Kamunyoru for Njagi for Interested parties

Respondent

All other parties