



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

SUCCESSION CAUSE NO.459 OF 1988

IN THE MATTER OF THE ESTATE OF EDWIN WAWERU MBUGUA (DECEASED)

MARY WANJIRU WAWERU..... APPLICANT

VERSUS

JOSEPHINE WAIRIMU MBUGUA..... RESPONDENT

R U L I N G

Edwin Waweru Mbugua (the deceased) died on 17th April 1986. Immediately prior to his death, the deceased was a civil servant working with the then Customs & Excise Department of the Ministry of Finance. The deceased died intestate but had indicated in his employment documents that his father, Mbugua Kiboro, was his next of kin. The father of the deceased (the petitioner) petitioned this court to be granted letters of administration. In the Form P&A 5, the petitioner listed himself as the only beneficiary of the deceased. The grant of letters of administration intestate to the estate of the deceased was issued to the petitioner on 23rd August 1988.

On 13th December 1988, the applicant herein moved this court by summons seeking the revocation or annulment of the grant that was issued to the petitioner. The applicant alleged that the petitioner had obtained the said grant by fraudulent concealing the fact that she (the applicant) was married to the deceased and in fact were blessed with one child known as Joseph Gichui Waweru. The applicant therefore claimed that, as the widow of the deceased, she was entitled to administer the estate of the deceased. She further urged the court to recognize her and her son as the dependants of the deceased. The petitioner opposed the application. He denied the allegation by the applicant that the deceased was married to the applicant in his life time. Unfortunately, for one reason or the other, the said summons for revocation of grant was not canvassed. The grant of letters of administration intestate that was issued to the petitioner was not confirmed. The petitioner died on 5th August 2005.

On 21st June 2010, the applicant made an application pursuant to the provisions of **Rules 49 & 73** of the **Probate & Administration Rules** seeking orders of this court for the petitioner to be substituted in these succession proceedings by his widow, Josephine Wairimu Mbugua (the respondent). The applicant further prayed that the respondent be restrained from alienating, sub-dividing, disposing off or in any other adverse way dealing with the parcel of land known as LR.No.Kiambaa/Kihara/68 (the suit property) pending the disposal of this succession cause. The grounds in support of the application are stated on the face of the application. In essence, the applicant reiterates that she is the widow of the deceased in these proceedings and therefore entitled to inherit part of the suit property which should rightfully have been inherited by the deceased were he to be alive. It was apparent that the applicant sought to enjoin the respondent in these proceedings to enable her agitate her case in a bid to establish that she was married to the deceased. The application is opposed. The respondent swore a replying affidavit in opposition to application. She denied the averment by the applicant to the effect that she (*the applicant*) was married to her late son, the deceased. She reiterated that the applicant was a stranger to the estate of her late husband, Mbugua Kiboro, and therefore, could not lay any claim to the properties that comprise the estate of the deceased.

This court has carefully considered the facts of this case. The applicant has all along claimed that she was married to the deceased in these succession proceedings. The deceased was the son of the respondent and Mbugua Kiboro (deceased). As stated earlier in this ruling, the applicant, soon after filing the application for revocation of grant on 13th September 1988 went to sleep. The last time any action was taken in this succession case was on 12th November 1990 when the court fixed the objection proceedings for hearing on 14th and 15th January 1991. The record of the court does not reflect what took place on that day. The applicant took no action in the cause until twenty (20) years later when she filed the current application seeking orders of the court to substitute the deceased petitioner with the respondent. It was apparent to the court that the applicant is seeking to lodge a claim for determination by the court in regard to the ownership of the suit property, a parcel of land situate at Kiambu. This court has perused the list of properties that were listed as being owned by the estate of the deceased in this cause. The suit property is not one of the properties that were listed as belonging to the deceased. It was clear to this court that the suit property was owned by the listed deceased petitioner (Mbugua Kiboro) to whose estate the respondent is the administrator.

This court is of the considered view that if the applicant wants to lay claim to the property of Mbugua Kiboro (deceased) on the basis that she was married to Edwin Waweru Mbugua (deceased) the son of the said Mbugua Kiboro (deceased), she should do so in the succession proceedings relating to estate of the said Mbugua Kiboro (deceased) and not in the estate of the deceased in these proceedings. This is because the estate of the deceased in these proceedings does not own the property that is the subject of the dispute. In the premises therefore, this court holds that the application lacks merit and is hereby dismissed with costs.

DATED AT NAIROBI THIS 14TH DAY OF MARCH, 2011

L. KIMARU

JUDGE