



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)**

Succession Cause 3321 of 2004

IN THE MATTER OF THE ESTATE OF MWAURA CHEGE (DECEASED)

LOISE WANGUI MBURU APPLICANT

VERSUS

JANE WAMBUI MWAURA RESPONDENT

RULING

The Administratrix in this cause is the wife of the deceased and obtained the grant of letter of administration in the Succession Cause No. 2 of 1988 before the R.M's Courts, Murang'a. The grant was also confirmed vide certificate of confirmation dated 26th July, 1990.

Thereafter Loise Wangui Mburu filed a summons for revocation on 30th October 2004 on the grounds that her husband one Mburu Chege was the first cousin of the deceased and was residing on half of the Land parcel No. Loc. 71/1 Chagaki/1/766 (referred to as the suit land) as a matter of right since 1970 and thus the deceased was holding the suit land in trust for the said Kibiru Chege.

It is further averred by the objector Louise that her aforesaid husband had disappeared without trace on 22nd November 1995 after the conclusion of the succession cause in Murang'a Law Courts.

However, I do note that exhibit A – produced by the objector which is a Court Proceedings of PMCC No.233 of 1990, clearly shows that the case for eviction against the said Mburu was filed by the Administratrix and thus the claim of the objector that she or Mburu did not know of the present cause is definitely wrong and cannot be accepted. Even in the record of Land Dispute Tribunal dated 8th September 2004 the aforesaid case has been mentioned.

Moreover, except for the averments made by the objector and her witnesses, no proof is shown that her husband Mburu Chege disappeared on 22nd November 1995.

I also note from the record that the suit land was bought by the father of the deceased herein and the deceased inherited the same on 19th December 1975. Mburu Chege was allegedly very much on the Land at that time as per the contention of the objector. No claim was made by the said Mburu and no remarks of any trust is recorded on the Title deed issued to the deceased. The suit land is thus not shown to be an ancestral land so far as Mburu Chege was concerned. In any way the relationship between Mburu Chege and deceased is described (although the objector did change her position) and there is clear evidence of the fact that Mburu was a son of the brother of the deceased.

The purported possession as of right as alleged by the objector is thus not even distantly proved.

Furthermore, Mburu Chege is not the Objector and Louise the objector has not shown how she got the right to bring this

application on behalf of her husband. There is neither a letter of administration (if Mburu is deemed to have died) or any power of Attorney on behalf of Mburu.

Only because she is a wife of a person who should be claiming the right before the court, if any, she has definitely not acquired any right to sue on behalf of her husband.

In any manner conceived under law, she has no *locus standi*, to present the summons for revocation dated 30th October 2004. The same is thus dismissed.

Once I have determined the issue of competence of the summons for revocation and dismissed the same, I do not intend to dwell on the facts of the matter. This long drawn matter has to come to an end.

Orders Accordingly.

Dated, Signed and Delivered at Nairobi this **18th** day of **March 2010**.

K.H. RAWAL

JUDGE

18.03.2010