



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MERU**

**Succession Cause 157 of 1990
IN THE MATTER OF THE ESTATE OF NJAWAMBURI KINGA ALIAS
NJAMBURI KINGA (DECEASED)**

**JOHN MUTHEE NJAMBURI APPLICANT
VERSUS
M'IMANA M'MUGUONGO RESPONDENT
JUDGMENT**

M'Imana M'Mugwongo petitioned for grant of letters of administration intestate in respect of this estate of Njawamburi Kinga alias Njamburi Kinga deceased on 26th November 1990. In the petition, he described himself as the son of the deceased. He listed the beneficiaries who survived the deceased as follows:-

- (i) Ciabaitaru w/o M'Muguongo
- (ii) M'Imana M'Muguongo
- (iii) Mukwanyaga
- (iv) Mukwanjeru w/o Maore
- (v) Gataa

He listed the assets of the deceased as parcel number *Igoki/Kiangua/624*. In the summons for confirmation, he sought that the only asset of this estate be registered in his name absolutely. Strangely, although this is a high court matter, it was the Deputy Registrar of this court that confirmed the grant as prayed on 22nd February 1991. An application was filed by Agnes Mukwanyaga Njamburi dated 5th March 1991. By that application, she sought leave of this court to file an objection to the petition out of time. What is of interest in that application, because it is not for consideration in this judgment, was her affidavit. She deponed in her affidavit as follows:-

“That the respondent/petitioner (M'Muguongo) is the son of the brother of my father the deceased.

That the respondent/petitioner did not disclose to me that he intended to file or had filed the petition in respect of the estate of my father.

That the mother of the respondent/petitioner granted consent to the respondent whereas I am the legal beneficiary of the estate”

As correctly stated by Agnes, the only consent filed herein was by Ciabaitaru who was described as the widow of the deceased. By that deposition, Agnes refuted that fact and stated that she was not the widow. Agnes further deponed in her affidavit:-

“That though the respondent petitioner inserted my name and those of my two sisters without

our knowledge, I have correct reason (sic) to believe that he wants to deprive me or my sisters of our father's estate which I am entitled to by birth right to inherit (sic)."

I have reproduced part of that affidavit because the deponent later in her oral evidence before court departed from those depositions. What is before court is the petition by way of cross petition filed by John Muthee Njaumburi.

This is as per the order of Justice Etyang of 28th May 1998

. John stated in his affidavit in support of the cross petition that he is the son of the deceased being the eldest of the deceased. He also said that his sisters Mukwanyaga and Mukwanjeru and Gatakaa were not involved in this succession. In oral evidence when this case came for hearing before me, John reiterated that he is the only son of the deceased. That he objected to the grant being issued M'Mugwongo because he was not the son of the deceased. He also stated that Ciambatura who consented to the petition by Mr. Mugwongo was not the wife of his deceased father. To the contrary, he said that M'Mugwongo was the son in law of the deceased. He said that the statement by M'Mugwongo in form P& A5 were false because M'Mugwongo was not the son of the deceased and was not entitled to inherit the deceased property. He said that Agnes, his sister was married to M'Mugwongo. PW2 said he knew the deceased well. They were related because his mother came from the deceased family. He said that the deceased had 4 girls and one boy called John Muthee. He too said that Ciambatua was not the wife of the deceased. The issued relating to the deceased property had been the subject of deliberations before the elders and the elders found that the property belonged to the family of Njaumburi deceased. In evidence, M'Mugongo stated contrary to the petition on record that the deceased was his paternal uncle. That his father and the deceased were brothers. He denied that John was the son of the deceased but rather was the son of Mberia. M'Mugwongo said he had lived with the deceased for 27 years. As a result, the deceased left for him his property. He left him the property because he had no sons. He said that Agnes Mukwanyaga is the unmarried daughter of the deceased. They reside on the suit property with her. When he was cross examined, contrary to what he had said before, he contradicted himself both in evidence, in chief and in his petition by saying that Ciambatura was not the wife of the deceased. Under cross examination, he accepted that he lied in the petition. He however denied signing the petition. DW2 was Agnes Mukwanyaga. She denied that John was her brother and denied that she knew him. She said that the suit property was given to M'Mugwongo because he was the name sake of the deceased. On being asked whether she was aware that the succession cause had been filed by M'Mugwongo, she responded by saying that when it was filed she was a minor child. However, when the court requested her to produce her national identify card, it showed that she was born in 1949. This succession was filed in 1990 and she therefore could not have been a minor then. When the succession was filed in 1990 she was 41 years old. Her evidence eventually became a comedy of errors. She stated that there was a son of the deceased called Kinyamu who died when he was 4 years old. That he had died about 10 years prior to her giving evidence before court. On being cross examined, she confirmed that the deceased her father died in 1976 and could therefore not have been the father of Kinyamu. In listening to the evidence of M'Mugwongo it became very clear to the court that he lied in

his petition and both him and his witness Agnes contradicted themselves and each other. I had an opportunity to observe the witnesses when they gave evidence and my assessment was John Muthee was an honest and credible witness. I even observed how sad he looked when Agnes his sister sided with M'Mugwongo and denied that she knew him. This prompted John to stand up in court to produce a photograph that was taken with him and Agnes when they were young children. At first Agnes denied being the one in the photograph but later accepted. I make a finding that M'Mugwongo was not a son of the deceased but rather that the son of the deceased is John Muthee. Accordingly, M'Mugwongo was not entitled to inherit from the deceased estate. It is clear to me that M'Mugwongo intermeddled with the estate of the deceased contrary to Section 45 of the Law of Succession Act Cap 160. It is also clear that he lied under oath. That is, in his affidavit in support of the petition dated

22nd November 1990. Because of that finding, I will recommend that the police do investigate the two offences that is of intermeddling and of perjury against M'Mugwongo. I therefore grant the following orders in this judgment:-

1. ***I order that the register of parcel number Igoji/Kiangua/624 be rectified by canceling the name of M'Imana M'Mugwongo and instead registering that land in the name of John Muthee Njaumburi absolutely. In that regard, leave is hereby granted to the Land Registrar to dispense with the requirement of the original title in carrying out into effect the rectification as ordered above.***
2. ***An order is hereby issued for the eviction of M'Imana M'Mugwongo his servants and agents from parcel number Igoji/Kiangua/624 forthwith.***
3. ***I direct the police through the state law office to carry out investigation into the possible criminal offence of intermeddling with the estate of the deceased Njawamburi Kinga alias Njamburi Kinga by M'Imana M'Mugwongo and in respect of possible perjury by M'Imana M'Mugwongo in the affidavit filed in this court on 26th November 1990 and dated 22nd November 1990 with a view to criminal charges being preferred against him.***
4. ***I order M'Imana M'Mwongo to pay the cost of this action to John Muthee Njaumburi.***

Dated and delivered at Meru this 7th day of May 2010.

MARY KASANGO
JUDGE