



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT MERU**  
**Succession Cause 84 of 1990**

**IN THE MATTER OF THE ESTATE OF MUTUAMWARI MURAGA (DECEASED)**

**MUGUNA MUTUAMWARI ..... PETITIONER (DECEASED)**  
**HELLEN KAREA MUGUNA ..... APPLICANT/ADMINISTRATOR**

**JUDGMENT**

The petitioner M'Muguna Mutuamwari, now deceased, petitioned for grant of letters of administration intestate in respect of this estate and in so doing, described himself as the only surviving son of the deceased. As it shall be seen later in this judgment, that was not the correct position because even as I received the evidence in this case, there was surviving one other son of the deceased and one daughter. The properties that belonged to the deceased were two. Namely, *Mwimbi/Chogoria/1036 and 131*. The petitioner was issued with a grant on 9<sup>th</sup> April 1991. An application was filed by Eustace Kaburu seeking leave to file objection to the petition out of time. In the affidavit in support of that application, Kaburu stated that the defendant left an oral will whereby he told him that parcel number 1036 was to be shared by the son of the petitioner, that is, Njeru Muguna and the son of Wilson Mugambi Murungi, Mutua Mwari that is, Mugambi Murungi). It became clear from the depositions of that affidavit that Wilson Mugambi Mutuamwari was also a son of the deceased in this estate. The record in this file shows that on 18<sup>th</sup> June 1993, a consent was recorded before court which was in the following terms:-

**18.6.93**

***Before Murugi Mugo – DR***

***CC Mwonjaru***

***Parties present***

***Mr. Riungu for petitioner (Muguna Mutuamwari)***

***Mr. Mithega for the objector (Eustace Kaburu)***

**COURT**

***By consent of the parties herein and their counsels' letters of administration be confirmed to the petitioner Muguna Mutuamwari and the objectors namely Eustace Kaburu and Wilson Murungi.***

***Land parcel number Mwimbi/Chogoria/131 comprising of 2.02 hectares or thereabouts to be registered in the name of the petitioner Muguna Mutuamwari.***

**Land parcel No. Mwimbi/Chogoria/1036 comprising of 7.40 hectares or thereabout be registered in the name of Njeru Muguna and Mugambi Murungi as proprietors in common in equal shares.**

**Each party to bear his own costs.**

**Murugi Mugo**

**DEPUTY REGISTRAR – 16.6.1993.**

A confirmed grant was issued in the terms of that consent on 14<sup>th</sup> July 1993 except that the administrator was named as Muguna Mutuamwari excluding Eustace Kaburu and Wilson Murungi as per the consent. The petitioner died on 7<sup>th</sup> October 2003. His wife, Hellen Kareka Muguna (Hellen) was substituted as the petitioner. Hellen in her affidavit in support of her application for substitution stated that her husband, the former petitioner, before his death had transferred parcel number 131 into his name but had not transferred parcel number 1036. She further stated in her affidavit as follows:-

4. ***“That the beneficiaries of land title number Mwimbi/Chogoria/1036 David Njeru Muguna and Mugambi Murungi were minors when the orders were made.***
5. ***That the applicant (Hellen) prays for this honourable court to appoint Hellen Kareka Muguna the administrator in place of her deceased husband (former petitioner).”***

A grant was issued by this court on 18<sup>th</sup> January 2007 in the name of Hellen. Idah Gaji M’Arachi together with Wilson Murungi and Eustace Kaburu filed a summons dated 15<sup>th</sup> February 2008 seeking the revocation or annulment of the grant. That is the application which is the subject of this judgment. In the affidavit in support of that application, Ida stated that she was the grant daughter of the deceased herein. In evidence, it later transpired that she was not a grant daughter but rather it was her late husband who was related to the deceased. She deponed further in her affidavit that the deceased before he died had given her a portion of 3 acres on parcel number 1036. She said that she had resided on that portion of land since her childhood. That further when Hellen filed her application for substitution and even when the former petitioner petitioned for grant, they did not inform her of this succession cause. That it was not until Hellen threatened her with eviction from the land that she discovered the existence of this succession. According to Idah, Njeru Muguna, who is a son of Hellen, was to get 6 acres in parcel number 131 and 4 acres in parcel number 1036. However, instead of that taking place, Hellen had divided equally parcel number 1036 between Njeru Muguna and Mugambi Murungi. In so doing, she failed to take into account the persons who were in occupation of that land such as herself, occupying 3 acres, Linus Marangu Matiri occupying one

acre, and Mugambi Murungi who is entitled to 9 acres. Before the hearing of the summons for revocation, Idah filed a Chamber Summons dated 8<sup>th</sup> May 2008 seeking for inhibition orders to be issued against parcels number *Mwimbi/Chogoria/4371, 4372, 4373, 4374, 4375 and 4376*. In that application, Idah deponed that whilst the application for revocation was still pending before court, Hellen had subdivided parcel number 1036 into those 6 parcels and had sold some of the parcels to persons who are not entitled to inherit from the deceased estate. This, she said, was detrimental to the other beneficiaries. An order of inhibition was issued by this court. Eustace Kaburu stated in an affidavit sworn on 21<sup>st</sup> July 2008 which facts he repeated in his oral evidence that Hellen and the former petitioner did not inform the family about the existence of the succession. He further stated in his affidavit:-

6. ***That it is true that the interested party Idah Gaji M'Rachi, Linus Marangu Matiri and Beatrice Mute should get a portion in land parcel No. Mwimbi/Chogoria/1036.***
7. ***That the interested party Idah Gaji M'Rachi has lived on the parcel of land for over 30 years and occupies 3 acres which were actually demarcated on the ground before the deceased died.***
8. ***That Linus Matiri Marangu had purchased from the deceased 1 acre of the land in parcel No. Mwimbi/Chogoria/1036 ten years before the death of the deceased and has lived on his portion since then.***
9. ***That even when the deceased was dying the said Linus Matiri Marangu was at his death bed.***
10. ***That Beatrice Mute Mutuamwari is a daughter to the deceased who was divorced long time ago before the death of the deceased. The family sat and agreed that she should be given one acre since she has no husband to inherit from.***
11. ***That all the above facts were in knowledge of the original petitioner before he died and we had agreed so in the absence of Hellen Kareya Muguna his wife.***
12. ***That the original petitioner has his own land namely Mwimbi/Chogoria/131 measuring 6 acres where the current petitioner resides.***

Njeru Muguna in replying for application for revocation swore an affidavit on 2<sup>nd</sup> October 2008 in which affidavit he accepted that Idah was in occupation of 3 acres of parcel number 1036. He confirmed that she was entitled to inherit those 3 acres. However, that Idah refused to contribute towards the subdivision costs of that parcel and in view of that refusal, his mother, Hellen, asked him to contribute one acre for sale to enable Hellen raise the money required for the subdivision to take place. That one acre was sold to Lawrence Njoka. Hellen in her affidavit sworn on 2<sup>nd</sup> October 2008 confirmed that she approached Idah and requested her to contribute to the subdivision costs. Hellen also confirmed that Idah is entitled to get 3 acres from parcel number 1036. In evidence before court, Idah said that

she had lived on parcel number 1036 for 30 years. That she lived with her husband before his death and now lives with her children on that land. She had cultivated on the land tea bushes and coffee. She said that it was the deceased who showed her the portion of land she was to occupy. She also stated that the deceased daughter called Beatrice also lives on the land. She stated that she wanted the court to give her her 3 acres which should be confined within the area she occupies and had developed. David Mugambi Mbijiwe, PW2 said that the deceased was his grandfather. He said that he was entitled to get 9 acres of parcel number 1036. That those were the instructions of the deceased but Hellen had failed to follow those instructions. Instead, Hellen had subdivided that parcel into 6 portions and had registered the parcels numbers 4371, 4374, 4375 and 4376 in her name. She had also registered in the name of her son David Njeru parcels number 4372 and 4373. This witness stated that the original parcel number 1036 is divided by a river and has valleys. The parcels number 4371, 4372 and 4373 were on a flat area but the others subdivision were on the sloppy parts. He further stated that parcel number 4373 and 4375 had big rocks. This witness confirmed that occupying that parcel of land was Idah, Beatrice Karimi and Marangu. On his portion, the witness said he had built a house and had planted tea and coffee bushes. That according to the mutation form which was followed by the sub division by Hellen had placed his house partly on parcel number 4372 and partly on parcel number 4373. PW3 was Murungi Mutuamwari who was the son of the deceased and a brother to the former petitioner. He too said that Hellen had secretly subdivided parcel number 1036. That they had a family meeting on 7<sup>th</sup> May 2004 and in that meeting he informed Hellen that the said land should be divided according to the wishes of the deceased. He too confirmed that there was on that land Idah and Linus Marangu who had lived there for 30 years. Also on the land was Lawrence Njoka, a purchaser, who had occupied the land for less than 3 years. Also on the land was his sister Beatrice Karimi. He confirmed that even as they recorded the consent, reproduced in this judgment these people were on the land. Linus Marangu Matiri stated that he purchased one acre of the land from the deceased for Kshs. 30,000/=. He paid for survey fees for the surveyor to excise the one acre and to prove the same, he produced the receipt as an exhibit. However, before the title was issued, the deceased died. The deceased had however allowed him to occupy the one acre and had even advised him to plant, which he did, coffee bushes. He had also fenced the one acre land. On that land, he had built a house and had even buried some of his grant children. He said that Hellen was aware he was on the land. In the lifetime of the deceased, he said that he was given by the deceased cows because he was looking after the deceased. Hellen, in evidence, stated that indeed there was a family meeting but it was held on 7<sup>th</sup> May 2005 and not 2004. At the meeting,

Eustace Kaburu said that the deceased had stated his wishes were for Njeru Muguna to get 3 acres and Mugambi to get 9 acres. She however denied that Linus Marangu was entitled to the one acre because he had taken the deceased cows. He however could get the one acre, according to her, if he gave her the 4 cows. For Idah, he said she should get parcels 4376 and 4374 totaling 3 acres. Beatrice was to get parcels number 4372 and 4371. She confirmed that she had sold an acre to enable her raise funds to complete this succession. She however conceded that this litigation had become contentious because the former petitioner had failed to take into account the persons that were occupying the parcel of land.

Hellen, when she substituted the former petitioner, her late husband, only seemed to have compounded the problem of this succession. She proceeded to subdivide parcel number 1036 without involving the known beneficiaries occupying the land. In so subdividing, she also allocated to those beneficiaries areas other than those that they were in occupation and had developed. Hellen's claim for the return of 4 cows by Linus Marangu is unfounded. There was no evidence that the deceased at the time of death owned the four cows. According to Linus Marangu, the deceased had given him the cows in his lifetime. Having considered the evidence on record and the written submissions of the interested parties, I find that those who are entitled to inherit parcel number 1036 are, Idah Gaji M'Arachi – 3 acres, Beatrice Mutea Mutuamwari – one acre, Linus Marangu Matiri – 1 acre, Lawrence Njoka – 1 acre and the balance to be shared between Mugambi Murungi and David Njeru Muguna. David Njeru Muguna will however get one acre less having sold it to Lawrence Njoka. It is in the interest of justice that each of the beneficiaries do get the portion of land where they occupied and developed. Hellen by secretly substituting the former petitioner and subdividing parcel number 1036 without involving the beneficiaries has proved that she cannot be trusted as an administrator. Accordingly, the following is the judgment of the court.

1. ***That the titles of parcels numbers Mwimbi/Chogoria/4371, 4372, 4373, 4374, 4375, 4376, are hereby canceled and the land registrar is ordered to revert to the original title Mwimbi/Chogoria/1036. To carry out that cancellation, leave is hereby given to the Land Registrar to dispense with the need of the original titles.***
2. ***The court orders that the grant issued to Hellen Karee Muguna be revoked and a fresh grant be issued to Eustace Kaburu.***
3. ***That grant issued to Eustace Kaburu shall be confirmed in respect of parcel number Mwimbi/Chogoria/1036 as follows:-***
  - (a) ***Beatrice Mute Mutuamwari one acre absolutely.***
  - (b) ***Idah Gaji M'Arachi – 3 acres absolutely***
  - (c) ***Linus Marangu Matiri – one acre absolutely***
  - (d) ***Lawrence Njoka – 1 acre absolutely***
  - (e) ***Balance to be shared between David Njeru Muguna and Mugambi Murungi with Mugambi Murungi***

*getting one extra acre over and above that which is given to David Njeru Muguna.*

4. *In putting into effect number 3 above, the beneficiaries will get the portion of land they have developed and have occupied.*
5. *There shall be no orders as to costs.*

Dated and delivered at Meru this 4<sup>th</sup> day of June 2010.

**MARY KASANGO**  
**JUDGE**