



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT EMBU

MISCELLANEOUS CIVIL APPLICATION 140 OF 2007

SUSAN WAKERA KARIMI.....1ST APPLICANT

TERESIA WARUGURU KATHIEGO.....2ND APPLICANT

JUDY CIRIKU KANYORO.....3RD APPLICANT

JOHN KABUI ITUGU.....4TH APPLICANT

VERSUS

PETER MIANO ITUGU.....1ST RESPONDENT

JULIANA MUTHONI WAITUGU.....2ND RESPONDENT

JUDGMENT

The petitioner who is also the administratrix of the estate of the late Itugu Karugu is **JULIANA MUTHONI WAITUGU**. There appears to have been some confusion because the name of one Peter Miano Itugu appears to have been added to the court documents but the gazettment was only in respect of Juliana and she was issued with the said grant on 7/12/2005. The 2nd Respondent herein is not therefore a Co-administrator and his name has therefore being wrongly enjoined in the summons for revocation. From the records in the ***Kerugoya Succession Cause No.75 of 2005***, it is clear that the applicants herein are daughters and son of the deceased. Their names were all listed in the P & A 5 form as the children who survived the deceased. The 3 daughters were nonetheless all married as at the time the deceased died. The record shows also that all the applicants herein signed the Form 38 and thus gave their consent to the Grant of letters of administration being issued to the petitioner. The said grant was issued to her on 7/12/2005. She filed an application for confirmation of Grant and the same was confirmed and the estate of the deceased which only consisted of Land Parcel **No. INOI THAITA/195** was distributed as follows:-

1. **PETER MIANO ITUGU** - 2.9. acres
2. **JOHN KABUI ITUGU** - 2.9 acres
3. **JULIANA MUTHONI WAITUGU** - 1 acre

The 3 daughters were therefore left out. They teamed up with John Kabui Itugu and filed the summons for Revocation of Grant dated 18/12/2007. They have asked the court to revoke or annul the grant of letters of administration as well as the certificate of confirmation on 2 grounds.

1. That they were obtained fraudulently and making a false statement and by concealment from the court of facts material to the case; and

2. That they were obtained by means of untrue allegation of facts.

The matter was heard by way of vive voce evidence where the parties testified and called witnesses what transpires however is that the problem was with the female applicants who decided they wanted a share of the land and they had been left out.

Interestingly, the 4th applicant who was actually given 2.9 acres said that it was wrong for him to be given the 2.9 acres as he should have been given only 2 acres. I found that preposterous since if that was his problem, he can voluntarily and gracefully surrender the 0.9 acres to the petitioner and that does not call for the revocation of the grant. I have carefully considered the summons for revocation. I am satisfied and hold that the grant of letters of administration was consented to by all the applicants herein. They cannot therefore denounce the same. The problem they have is that the petitioner was only given 1 acre which was meant to be for her use and for any daughter who would return home from her husband's home. At the hearing, the applicants contended that they were not present in court when the said grant was confirmed. I was unable to decipher the handwriting of the learned Magistrate but even assuming that none of the beneficiaries was in court, the magistrate was guided by the petitioner's affidavit in support of the application and looking at the mode of distribution, proposed he was satisfied that it was fair. I too am of the view it was fair. I too am of the view that it was fair. I say so because the provisions of Section 40 of the Law of Succession Act notwithstanding, the 3 daughters were in my considered view not entitled to receive an equal share of the land- or indeed any land at all from the deceased's estate. There are old women who have been married some for over 40 years. Indeed one can argue that as at the time they got married, the Law of Succession Act had not even been enacted and had not therefore come into operation. By the time the deceased died in 1994, these applicants had long settled down with their own families and even the deceased would not have expected them to come back and claim his land. My finding is that the Law of Succession Act does not apply to them. They cannot be allowed to invoke the Law of Succession Act Ex-post-facto. My finding is that there was absolutely no non-disclosure of any material facts or information or any manner of fraud. If the petitioner wanted to defraud anybody, she could have transferred the entire plot to herself or given herself a bigger portion than the 1 acre. The applicants here are just driven by greed and want to come back to the home they left decades ago to claim what is not rightfully theirs. This would amount to a travesty of justice. This court will not allow it. I therefore dismiss their summons dated 27/6/2007 and order that the grant of letters of administration along with the certificate of confirmation issued to the 1st respondent will remain in force. I further order that the said estate be distributed within 6 months of the date hereof. Otherwise this court will mark this file as closed on the expiry of the 6 months.

W. KARANJA

JUDGE

18/6/2009