



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

Succession Cause 1725 of 1997

IN THE MATTER OF THE ESTATE OF MUGURE GACHANJA (DECEASED)

MARY NJERI KAMUNYU PETITIONER/RESPONDENT

VERSUS

JOHN NDUNG’U WAINAINA & 3 OTHERS OBJECTORS/APPLICANTS

JUDGMENT

This cause has a history behind it.

This court itself has made two rulings in the cause. The gist of the said Rulings were that the Petitioner Mary Njeri Kamunyu was issued with grant of Representation as she was the daughter of the deceased. However, claim of the protestors John Ndungu and his three brothers, was recognised in the first ruling delivered on 10th May, 2002.

Despite that fact, Mary filed a summons for confirmation without notice to the Protestors and obtained confirmation of grant devolving the property Githunguri/Kimathi/127 to herself. The said certificate was challenged and vide my ruling of 6th March, 2007, the said Certificate of confirmation was revoked and I further found that the property in question was held by the deceased in trust for the objectors.

In fresh summons for confirmation, Mary has proposed that 6 acres of the property be given to her and 1.2 acres be divided amongst the family of the protestors. This proposal is obviously opposed by the four protestors.

In the Previous ruling of this court delivered on 6th march, 2007, apart from finding that the deceased held the land in trust for the protestors, I also found that they were occupying a portion of suit property when they were evicted therefrom after Mary obtained certificate of confirmation which was revoked.

It was also noted that the deceased and her father were buried on the land belonging to Peter Ndungu Wainaina and not on the suit property and that the protestors had been cultivating coffee on the suit property. I also noted very specifically that the deceased asked for confirmation from the protestors before Mary and her husband Kamunyu were given permission to reside on the suit property till they find final permanent residence elsewhere. Mary did not find any residence and continued staying on the land.

It is also not in dispute that the deceased died before the commencement of the Law of succession Act. The certificate of Death dated 19th May 1997 bearing No. 400899 confirms that fact.

It is also on record that the deceased returned to her father's land after her marriage broke down and the land was registered in her name as she was a member of the adjudication committee as well as a disabled person.

My Ruling of 6th March, 2007 has not been challenged and thus Mary's evidence, that she was not aware of any decision of this court as regards the deceased holding the suit property in trust and that she did not recognize that finding, is totally irrelevant.

In the same breath submissions made by Mrs. Mbaiya in her written submissions against the ruling cannot be entertained in absence of any challenge by way of an appeal or review. Moreover, her reliance on the provisions of the Law of Succession Act is also misplaced as they do not apply to this estate as per section 2(2) of the Act.

In the premises, the best I can do is to exercise my Judicious discretion and also a well established principle of substantive justice, I thus direct that the suit property be equally divided amongst the Petitioner Mary and four protestors herein.

I further direct the Registrar of Land to recovery the suit properly bearing Parcel land No. Githunguri/Kimathi/127 in the names of the deceased.

The certificate of confirmation be issued in accordance with the aforesaid orders.

Each party to bear its costs.

Dated, Signed and Delivered at Nairobi this 24th day of **November 2009**.

K.H. RAWAL

JUDGE

24.11.2009