



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

Misc. Appli. 32 of 2005

LUCY WANJIKU DOMINICAPPLICANT

VERSUS

JULIANA WATHITHI KARIMI.....RESPONDENT

RULING

Application dated 12/3/2005 is for Revocation of grant issued to Respondent on the grounds that the proceedings to obtain the same were defective in substance and that the grant was obtained fraudulently

by making false statements or by concealing from the court something material to the case. The applicant is a co-wife of Respondent. The deceased Dominic Karimi Wachira was their husband. The applicant states that she was not informed of institution of succession proceedings by her co-wife. She was not given any inheritance. The respondent says that she is the legal wife of deceased having been married under statute. And that the Applicant was married to a William K. Njeru on 28/12/94 when the deceased was still alive. And also the Applicant is married to another man. To these averments the Applicant says she is a married woman under Kikuyu customary law and she exhibited 3 birth certificates of children born to her survived by the deceased. She further says she resides on plot No. Kabare/Njiku/1337. She denies having been marked as alleged by the Respondent. The parties also testified in open court. The applicant testified that she was married under customary law and she had children with deceased. Applicant's exhibit -4 a letter to the chief the District Commissioner Kirinyaga advised the chief of the area to give Applicant a succession letter and if there was another party the matter would be decided by court. Therefore as far back as March 2004 the Respondent was aware of the claims of the Applicant. The Applicant's mother gave evidence as PW2. She testified that Applicant was married to the deceased and she was a Co-wife to the Respondent and that the children of Applicant are fathered by the deceased. She also explained how the dowry for Applicant was paid by the deceased.

PW3 confirmed that he knew Applicant as wife of deceased and he assisted them to sell some part of the deceased land to avoid the sale by auction of the whole land. He also saw that there was a small timber house on the land. He confirmed that son of first wife was called Wachira. The last witness Mwangi Kangangi said he was present when the dowry was paid. He was representing the deceased clan. However he knew of the first wife, the respondent. The respondent gave evidence and produce her Marriage Certificate and confirmed that she had 5 children with deceased. She was working in Nairobi and husband was a teacher. She also informed the court that the deceased was transferred to Lamu to teach and that there he acquired another family. He married Grace Wachuka and that they had 5 children. After death of husband she arranged for funeral a plot registered in her name in Ruai. The woman she call Grace came from Lamu for the funeral.

It is to be noted here that the chief's letter did not mention Grace Wacuka or her children after her husband died she heard that the Applicant was married to her husband the deceased. She carried court

investigation and found that the Applicant was married to someone called Mr. Wilson. This document attached to her affidavit is not admissible in Evidence. It is a photocopy and it is not authenticated.

From the above then it is clear that the Respondent did follow the procedure as prescribed in the Succession Act for obtaining a grant. There is no evidence produced by the applicant to prove that the proceedings were defective in substance or that the grant was obtained fraudulently. However the Respondent now discloses that the deceased had in Lamu which was not disclosed in the Succession Case No. 92 of 2003. Also she failed to disclose the other family she names children of Wachuka. And she says that she did not know of the existence of the applicant and her children. And furthermore she says she was married under Statute and Certificate was issued under Marriage Act. She to keep these other women and their children out of the proceedings.

It is my view that full disclosure of all material facts relating to a deceased person must be made in proceedings of succession and inheritance. The requirements of Succession Act Cap 160 as to the issues of inheritance is different from the requirement marriage laws as to the family. Therefore the Respondent conceded from court the full list of survivors and also the complete list of the assets of the deceased.

I therefore allow the application and grant orders as prayed.

No orders as to costs.

Dated this 22nd April, 2008.

J. N. KHAMINWA

JUDGE

22/4/2008

Khaminwa – Judge

Njue- Clerk

Mr. Chomba HB Ms Thungu

Lucy Wanjiku present

Juliana in person

Read in open court.

J. N. KHAMINWA

JUDGE