



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**  
**AT NYERI**

**Succession Cause 127 of 1991**

**IN THE MATTER OF THE ESTATE OF KINGORI GICHURU - DECEASED**

**LYDIA WANGUI KINGORI ..... PETITIONER**

**Versus**

**JOHN MURIITHI KINGORI .....APPLICANT**

**JUDGMENT**

**LYDIA WANGUI KINGORI** petitioned for grant in respect of this estate and in so doing listed a number of beneficiaries who included Paul Kingori Muriithi as a purchaser. Subsequently the grant was confirmed whereby one of the estate properties namely Parcel No. OTHAYA/ KIANDEMI/490 was to be shared equally between the administrator and the said purchaser. A revocation of the grant application has been brought before court dated 11<sup>th</sup> April 2000. In the affidavit in support of that application for revocation the applicant questioned the inclusion of Paul Kingori Muriithi in the estate who he said was not a beneficiary. It should be noted that there were other properties of the deceased which were given to the children of the deceased from the two homes. The deceased had two wives. By further affidavit of the applicant dated 3<sup>rd</sup> November 2003 the applicant stated that the administrator Lydia Wangui Kingori was not his mother. In the replying affidavit by the said administrator she confirmed that Paul Kingori was a purchaser of Parcel No. 490. That that transaction of sale had began during the life time of the deceased. That at the time of petitioning the grant the name of Paul Kingori was included and the other beneficiaries did not object. As at now the administrator said that parcel no. 490 had already been divided equally between herself and Paul Kingori. At the hearing of the application for revocation the applicant in evidence departed from the issue raised in the application. The applicant said that the administrator was not a wife of the deceased but rather she was imposed on them by the elders who appointed her as a wife of the deceased. The applicant did accept that Paul Kingori was a purchaser but objected to his inclusion as a beneficiary on the basis that he was not a relative of the deceased. The applicant confirmed having noticed the publication of this succession cause in the Kenya Gazette in 1999. It should be noted that this application for revocation was filed in the year 2000. He stated that he was serving a prison sentence between the years 1982-84. The deceased died whilst he was in prison. He called two witnesses PW 1 and PW 3. These witnesses who are brothers of the applicant denied any knowledge of the administrator. On being cross examined they suggested that she could have been an employee of the deceased. The court noted that the witnesses were not truthful whilst they were giving their evidence. They stated that the deceased wife was Domitira Wahito. The administrator stated that she was a wife of the deceased William Kingori Gichuru. The deceased died in 1993. They were married in 1973. She acknowledged that the deceased had another wife Domitira Wahito. The administrator stated that the children born between her and the deceased were named according to the kikuyu custom that is, after the husband's parents' names and his brothers. She produced a national identity card to show that she was having the deceased's name. She said that the applicant had demolished her house on the estate property and she has been forced to rent her accommodation. During the life time of her deceased husband he entered into an agreement to sell Parcel No. 490 to Paul Kingori Muriithi. Paul Kingori paid the deceased Kshs. 35,000. She produced an agreement between the two to confirm that transaction. After the death of her husband she continued with the transaction. She said that the applicant was aware of the transaction. That at the time when the deceased was entering into that agreement he sent a delegation of family members to the applicant in prison to inform him of the transaction. The administrator said that it was only after discussing the matter relating to the estate with all the

beneficiaries that she proceeded to petition for the grant to this estate. At the discussion she said that they even offered to contribute legal fees towards the succession cause. It was only one of them called Ndirangu who made a contribution towards those fees. She therefore concluded that the applicant and his brother knew about the succession cause and did not object. She said that Parcel No. 490 was subdivided between her and Paul Kingori and that she had already obtained her title of two acres. Paul Kingori got the portion he had purchased. PW1 the applicant and PW 2 and PW 3 had at the confirmation of grant been given Parcel No. OTHAYA/KIANDEMI/445 whereby each of them obtained three acres. Property SIRMA BLOCK 1/654 had been given to her son called Moses Muriithi Kingori and the applicant equally. There was a savings account in the name of the deceased which she said that to date it had not been distributed. The issue to be determined as I see and as seen in the application for revocation is whether or not Paul Kingori Muriithi was entitled to be listed as a beneficiary. Paul Kingori was listed as a purchaser. That was clear according to the affidavit of petition for grant. All the beneficiaries according to the evidence of the administrator were consulted before the filing of that petition and they did not raise an objection. Apart from the fact that the applicant and his witnesses in their evidence went on tangent in that rather than dealing with the issue of the purchaser they disowned the administrator. On the whole their evidence was not credible. It was not believable when they denied that the administrator was a wife of the deceased. It was also not believable when they said that the deceased was not the one who started the sale transaction with Paul Kingori. In order to bolster their case they alleged that the administrator had never been married to the deceased. That issue I believe was a red herring which was meant to distract the court from the real issue in the case. Paul Kingori who was in the courts view entitled to be included as he was in the petition as purchaser. All the parties were in the know of the existence of the transaction. Accordingly the court's finding is that the summons for revocation dated 11<sup>th</sup> April 2000 fails and the same is hereby dismissed with costs to the administrator.

It has become apparent however that the confirmed grant failed to distribute the bank account of the deceased. Accordingly the court does hereby order that the confirmed grant herein be amended to include the Savings Account No. 113-00-0614 Kenya Commercial Bank Othaya the amount therein be divided into two equal amounts to be shared as follows:-

- 1. One half of the amount in credit in that account to go to Lydia Wangui Kingori***
- 2. The other half to go to John Muriithi Kingori, Joseph Muriithi Kingori, and Paul Ndirangu Kingori each getting an equal amount.***

The grant therefore is amended to that extent.

**DATED AND DELIVERED THIS 19<sup>TH</sup> DAY OF JUNE 2008**

**MARY KASANGO**

**JUDGE**