

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYERI

Succession Cause 568 of 2001

EUNICE WANGUI WAMBUGU..... APPLICANT

Versus

MICHAEL MUCHEMI MACHARIA 1ST RESPONDENT

GRACE WAMBUI RUBIRO 2ND RESPONDENT

JUDGMENT

Michael Muchemi Macharia petitioned for Letters of Administration intestate in this estate on 11th October 2001. In so doing he stated the persons left following surviving the deceased were himself and Grace Wambui Rubiro. A grant was issued dated 14th March 2003. This judgment relates to summons for revocation or annulment of that grant brought by Eunice Wambui Wambugu. The matter proceeded by way of viva voce evidence. Eunice in her evidence stated that she was the daughter of the deceased. Her mother was the second wife of the deceased. The deceased had three wives namely;-

1. Kanuthu
2. Mumbi
3. Wanjuku

She stated that the only two people who survived the estate was herself and Grace Wambui Rubiro. She stated that she got to know the petitioner Michael when he was residing in Nyahururu. She however was unaware how he was related to the deceased. In her affidavit in support of the summons for revocation paragraph 2 she emphasized that the respondent was not a grandson of the deceased and stated that he was therefore not entitled to inherit from this estate. She said that it was her and grace who reside on the estate property that is RUGURU/KARUTHI/797. Despite the fact that they are on the land together with Grace, she said Grace did not tell her when they petitioned with Michael for grant of letters in this matter. She said that she got to know about this succession when she saw the petitioner coming on the land. She denied that she is married. But that she has three sons with different men. In his evidence the petitioner Michael gave contradictory evidence. At one time he stated that he is the grandson of the deceased. At another time he said that his mother was Wanjuku who was married to the deceased herein. At another time he stated that the father of Eunice the applicant herein and his father were brothers. He further stated that the estate property should be divided into two with one half going to him representing one house and the other half going to Eunice and Grace who come from the other house. He said that since the confirmation of the grant herein he had subdivided the estate property and obtained two titles with RUGURU/ KARUTHI/1811 being registered in his name and 1812 being registered in the name of Grace. On being cross examined he denied that he demolished the house of Eunice on the suit property. He however confirmed that he is renting out his property Ruguru/Karuthi/1811. Grace gave evidence which essentially supported the evidence of Michael. She confirmed that Eunice's entitlement is under her title no. 1812 and she was willing to divide that title on condition that Eunice would pay the survey fees.

I have considered the oral evidence before court together with the affidavit evidence. It is clear that P & A 5 that the petition excluded Eunice as a beneficiary. In the petition Michael described himself as the grandson of the deceased. From the evidence tendered before court it is clear that Eunice was a daughter

of the deceased. Grace was a daughter in law of the deceased. Michael who was the driver of this petition failed to state the name of Eunice as a beneficiary and failed to cite her. In his affidavit in reply Michael stated that Eunice was aware of the proceedings but she failed to get involved. The petition by Michael has anomalies as stated before in that Eunice was not names as a beneficiary which will lead the court to amend the confirmed grant issued by the court in this matter. The deceased was said to have died in 1965. It would therefore seem that the Law of Succession Act did not apply to his estate. The parties did not address the court on the customary law applicable to this estate. That as it may be Eunice was an unmarried daughter of the deceased. Grace was a daughter in law by virtue of being a wife of the deceased son. I am of the view that the two are the only beneficiaries entitled to inherit the deceased property. As stated by Michael in evidence the property has been subdivided. In my view the evidence of Michael bore inconsistencies. He was also not a believable witness on the stand. It seemed clear that Grace was supporting Michael in his claim. Considering her demeanor at the witness stand she looked like somebody who could easily be manipulated. This may well be what happened and which led to her giving the evidence that was favourable to Michael. Bearing all the evidence adduced I find that the just decision is to order that the confirmed grant dated 14th March 2003 be amended as follows;-

<u>NAME</u>	<u>DESCRIPTION OF PROPERTY</u>	<u>SHARE OF HEIRS</u>
LR. RUGURU/KARUTHI/797	7.4 ACRES	
EUNICE WANGUI WAMBUGU	3.7 ACRES	
GRACE WAMBUI RUBIRO	3.7 ACRES	

To that end the order of this court is that the title issued to Michael Muchemi Macharia in respect of LR. RUGURU/KARUTHI/1811 be and is hereby cancelled and the Land Registrar is hereby ordered to issue a title in respect of that property RUGURU/KARUTHI/1811 in the name of EUNICE WANGUI WAMBUGU without requiring the production of the original title. The costs of the summons for revocation are awarded to EUNICE WANGUI WAMBUGU to be paid by Michael Muchemi Macharia.

Dated and delivered this 15th day of December 2008.

MARY KASANGO

JUDGE