



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT EMBU

Misc 143 of 2005

GRACE WANGITHI MURIITHI.....APPLICANT

VERSUS

EUNICE NYAWIRA MURIITHI.....RESPONDENT

JUDGMENT

The applicant Grace Wangithi Muriithi filed a summons to revoke the grant issued to Respondent Eunice Nyawira Muriithi. The grounds set out in support of the application are that the grant was obtained secretly without the knowledge of the applicant and that the respondent concealed the names of the applicant and her children as survivors in form P & A 5 of the Petition.

The parties gave evidence in court. The applicant gave evidence and called 2 witnesses. The applicant's evidence is that she was married to deceased in 1964 when she was still at school and dowry was paid by deceased to her parents. They resided in Nairobi where deceased was residing before husband was transferred. She went to reside home in **Plot No. 27 Kiamaina** where they stayed and had given birth to 7 children. Then husband (deceased) was transferred to Embu and she was residing in Kiamaina. She testified that when the deceased passed away in 2003 there was a meeting at chief's office when the Respondent and the elders said she was not the deceased wife. She produced exhibits 1, 2, and 3. The exhibits show the Respondent was the legal wife of the deceased. She (Applicant) had petitioned for a grant in **Kerugoya Succession Case No. 111 of 2005** but this was closed under court order on 2/9/2005. By this time Succession Cause No. 210/2004 had already been concluded and grant confirmed on 8/7/2005. It is correct that the grant confirmed does not include the Applicant and her family. The applicant cannot say that there was concealment because the Application by Respondent was processed through all procedures and it was even advertised in the Gazette. The Applicant was never introduced by deceased to the Respondent or the elders as the deceased wife.

On cross-examination she said deceased was assisting the children by paying for their education. Applicant did not produce any documentary evidence to prove this fact. She was supported by PW2 brother of deceased who migrated to Rift Valley in 1964. He testified that the Applicant went to stay in Kiamaina. PW3 was a co-employee of deceased in same ministry he was from Kiamani. He testified that Applicant was a wife of deceased. Deceased told him he had married her. The Respondent in support of her case produced her marriage certificate Exhibit 10 which shows that the marriage was contracted under the African Christian Marriage Act Cap. 157 Laws of Kenya

t the husband and wife were married under Customary Law celebrated marriage the religion was of Association of Jehovah's Witnesses.

The wedding was celebrated in 1992. The marriage of the Applicant is said to be in 1964 there is nothing to prove the same except the word of mouth. The Marriage contracted under Cap 151 Laws of Kenya are monogamous marriages they are permitted when parties to a customary marriage embrace Christianity or other religion which does not permit polygamous marriages. The Succession Act Cap.160 does not shut out parties living in polygamous marriage but once a marriage is converted under the Act, the marriage becomes monogamous under an Act of Parliament and it is an offence to contract another marriage thereafter.

I find no evidence sufficient to support the Applicants marriage she says she has seven children with deceased but she did not produce a single birth certificate. She says deceased was paying for the education of her children but no documentary evidence was shown to prove that fact.

I also find that the Respondent did not conceal any material fact from the court. She followed all the steps required and even she had a chief's letter confirming the beneficiaries of the deceased as the Respondent and her children. The chief did add that at the time of his death another woman (Applicant) came forward to claim as a wife. It is clear the office of the chief had not known of the existence of Applicant as wife of deceased before. It is my finding therefore that the Applicant has not proved her marriage to deceased or that the children she has are of the Deceased.

I therefore dismiss the application no orders as to costs.

Dated this 22nd January 2007.

J. N. KHAMINWA

JUDGE.

22/1/2007

Khaminwa –Judge

Njue – Clerk

Eunice Nyawira present in person

Judgment read in her presence in open court.

J. N. KHAMINWA

JUDGE