

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAKURU

Succession Cause 519 of 2004

IN THE MATTER OF THE ESTATE OF JAMES KIMANI NGANGA (DECEASED)

GRACE WANGUI KIMANI PETITIONER

AND

LEAH WANJIRU MWAURA APPLICANT

RULING

The late **James Kimani Ng'anga** (*deceased*) died on 12th September 1999 intestate. **Grace Wangui Kimani** petitioned for letters of Administration on 4th October 2004 while claiming that the deceased died intestate and was survived by only herself and a daughter called **Eunice Nyambura**.

The grant of letters of Administration was issued on 8th February 2005 and subsequently confirmed on 21st October 2005 whereby the deceased only property **RARE/TERET BLOCK 1/2442 MUTUKANIA** was vested upon the said Grace Wangui Kimani.

On 13th day of December 2005, **Leah Wanjiru Mwaura** filed the summons for revocation of the grant on the grounds that the grant was obtained fraudulently by the making of a false statement and by concealment from court of something material to the case.

This matter came up for directions and the petitioner who was duly served was granted leave to file a replying affidavit and directions were given that the matter do proceed to hearing by way of oral evidence to determine whether the applicant, Leah Wanjiru Mwaura was the widow of the deceased.

The petitioner did not file any replying affidavit and did not attend court during the hearing. The applicant proceeded to give oral evidence and gave details to this court of how she too was also married to the deceased through the Kikuyu Customary Law of Marriage in 1967. They had five children with the deceased although one died, there are four surviving children namely; *Simon Murigi, Agnes Njambi, Rahab Muthoni* and *Eunice Njeri*.

According to the applicant, she used to live with the deceased at **RARE/TERET BLOCK 1/2442 MUTUKANIA** where the deceased is buried. The petitioner is her co-wife and she secretly applied for the letters of Administration whereby the applicant and her children have been left out.

The petitioner did not attend court nor did she file a replying affidavit despite the leave that was granted by court.

I am satisfied that the applicant has been able to prove that she is the widow of the deceased and she and her four children also survived the deceased. She is ranked in priority with the petitioner who obtained the grant by failing to disclose material facts.

Accordingly, I hereby revoke the grant of letters of Administration issued to the petitioner on 8th February 2005 and confirmed on 21st October 2005 and all the consequential transaction especially the transfer of **RARE/TERET BLOCK 1/2442 MUTUKANIA** to Grace Wangui Kimani is also cancelled.

The said original grant be returned to court by the petitioner for cancellation. Another grant be issued to both widows; **LEAH WANJIRU MWAURA** and **GRACE WANGUI KIMANI** as joint Administrators of the deceased estate who shall proceed either jointly or severally to apply for confirmation and distribution of the deceased estate.

It is so ordered.

Ruling read and signed on 7th July 2006.

MARTHA KOOME

JUDGE