



IN THE HIGH COURT

AT MERU

Succession Cause 201 of 2002

**IN THE MATTER OF THE ESTATE OF FRANCIS MURITHI MWITI ALIAS FRANCIS
M'MURIITHI M'MARETE MWITI A.K.A FRANCIS MURIITHI M'MARETE
MWITI.....DECEASED**

**CECELINA NYOROKA M'IKIUGU
PETITIONER/RESPONDENT**

VERSUS

BEATRICE M'MARETE RESPONDENT

R U L I N G

1. Francis Muriithi Mwiti and also known by the aliases above died on 26.7.1999 and his widow, Cecelina Nyoroka M'Ikiugu filed this Succession Cause on 27.6.2002 and stated in her Petition that the deceased was survived by herself and her children, Joseph, Julius, Jennifer and Julia. She also named one, Paul Mworira Bagine, as an Interested Party and I now gather that he actually is a purchaser of land known as Nyaki/Giaki/1957 originally in the names of the deceased. Letters of administration were issued to Cecelina on 14.10.2002 but on 18.2.2005 the mother of the deceased, Beatrice M'Marete filed what she called an objection to the making of a grant to Cecelina and subsequently filed an application for revocation of the said grant and that is what came for hearing before me.

2. In the summons for revocation of grant, Beatrice aforesaid listed the following as her grounds for so doing;

- (i) The Applicant is the deceased's mother.
- (ii) The applicant has been a dependant of the deceased.
- (iii) The deceased having subdivided and sold the land undertook to settle the mother applicant elsewhere.
- (iv) Before doing so, the deceased died
- (v) The applicant facing imminent eviction from the purchasers of the land, sought to file a succession cause to enable her get a part of the deceased's estate so that she would have a place to live.
- (vi) Upon visiting the Registry, she discovered that the deceased's widow had already filed a Succession cause without involving or informing her.

3. Beatrice in her evidence said that she was a dependant of the deceased because she had left her

husband in 1952 or thereabouts and it was her case that she went to live on land parcel number Nyaki/Mulathankari/397 which her husband registered in the deceased's name to hold in trust for his siblings. She admitted that before the deceased died, he had sold the land and that when she tried to stop the transfer and eventual loss of the land, she lost all the cases up to the Court of Appeal and she was evicted from the suit land in May 2006. That the cause herein was filed without her consent and yet she was a dependant of the deceased aforesaid. She now claims to be landless and deserves a home from the land left by her deceased son.

4. In support of her case, Beatrice called Andrew Muriungi who said that Beatrice's husband registered the land in the deceased's name in 1966 or 1967 because he wanted to be considered as landless and eligible for land in a Government Scheme. He was not sure if he eventually got land in that scheme but Beatrice lived on the land until she was evicted. George Koome M'Rukaria, acting Chief of Mulathankari Location, supported the evidence that Beatrice has always lived on the land at Mulathankari as did her son, Peter Bundi M'Marete, brother of the deceased

5. Cecelina for her part said that the land belonged to her deceased husband and her mother-in-law had no claim to it. She called M'Marete M'Ringera, her father-in-law, who said that he was the one who bought the land in Mulathankari but decided to register it in his son's name. He stated that Beatrice is his estranged wife but that she has no claim to the deceased's land and that if she has any interest in land, then it is to him that she must make her claim and not to her daughter – in – law. He said that he had provided land for all his children including Peter Bundi who in evidence said that he was landless.

6. I should note that firstly, although the Application dated 18.2.2005 was for revocation of grant and therefore the Applicant has to contend with s.76 of the Law of Succession Act, the whole case rested on the claim by Beatrice to land parcel number Nyaki/Mulathankari/397. The procedural problem is compounded when prayer 2 of that Application is for objection to the making of a grant when in fact the grant had already been made. However, the history of this matter is such that, I think I should address the issues raised in substance and apply prayer (c) of the Application dated 8.2.2005 to make such orders as are meted and just.

7. I should start by saying that Beatrice commenced her crusade to inherit the disputed land when she made a complaint to the Meru Central Land Disputes Land Tribunal in its LDT case No. 31 of 1998 while her son, the deceased in this cause was still alive. One John Gitonga M'Mbui had bought the land from the deceased who was the registered proprietor thereof and his mother tried to object to the transfer although the necessary Land Control Board consents had been obtained. The Tribunal agreed with her and found that although in fact title had passed to John Gitonga M'Mbui, the title should be cancelled. In fact by that time, title No. 397 had been sub-divided and new titles issued as Nyaki/Mulathankari/1678,1679,1680 and 1681. The decision of the Tribunal decision was however quashed by Aganyanya J. on 12.6.2000 in H.C.C. Misc. 92/1999 (Meru) and the decision upheld on Appeal to the Court of Appeal in the famous case of Beatrice Marete vs Republic Ex-parte John M'Mbui, Civil Appeal No. 259/2000. Beatrice then backtracked and reopened the issue through the present proceedings.

8. I will address the issue on two points only;

The first is that M'Marete M'Ringera husband of Beatrice is alive and has land at Cioguru, Kithooka and although separated from Beatrice, he was emphatic that Beatrice should claim land from him and not from his daughter-in-law. As for the land that Beatrice is pursuing with so much passion, M'Ringera was emphatic that it was his land and he gave it to the deceased and that his other sons have similarly been well provided for. That Beatrice is entitled to land if she is cleansed under customary law for undisclosed ills she had committed in the past.

9. I take the view that with this background, Beatrice has no claim to the land in Mulathankari. She can only claim it through M'Marete M'Ringera who gave it to his son, who sold it and Beatrice evicted by the present registered proprietor. Even if as I notice titles Nos. Nyaki/Giaki/1957 and 2409 are still registered in the names of the deceased I do not see how Beatrice can only have a superior claim to that of Cecelina

widow of the registered proprietor. My reading of s. 36 of the Law of Succession Act tells me that a spouse has a prior claim to that of the parents of the deceased intestant as to the letters of administration or to his net intestate estate. The position is even more clearer in this case because the father of the deceased who initially owned the land is alive, has land elsewhere and is insistent that his estranged wife has no claim to his deceased son's estate. Beatrice also claims to have been a dependant of the deceased and that he had agreed to settle her elsewhere upon sale of parcel number 397. Under s.29(b) of the Law of Succession Act, a "**dependant**" is defined to include a parent who the deceased "**was maintaining....immediately prior to his death.**" In the instant case, the only claim of maintenance made by Beatrice is that she was allowed to live on parcel No.397 by the deceased and that in fact the deceased was holding that land because her estranged husband registered it in the deceased's names. Aside from the fact no evidence was tendered to support her claim as to the manner of registration of the land and I have said why, there was no evidence whatsoever of her being a dependant for starters, the deceased sold the land while he well knew that his mother was living there, if at all and when she sued him, he and the purchaser on succeeding in the suit evicted her. If her only claim to dependency was user of the land, the deceased clearly by his actions was showing otherwise. I find no basis for her claim that she was a dependant of the deceased. Both the facts and the law as I see it do not therefore support Beatrice's claim to the land she so resiliently desires and I so hold.

10. The second point I must advert to is this; Beatrice objects to Cecelina being granted letters to administer her husband's estate. I do not see how she can do so in view of the guidelines in s.66 of the Law of Succession Act. She has given no reasons why her claim should supersede that of the deceased's widow.

11. Even if I was wrong in my conclusion, I do not see that an objection to the making of a grant that has already been made, makes serious sense to me and is an absurdity if not a ridiculous proposition. Cecelina has already been granted letters of administration and an objection at this stage is misguided.

12. Lastly are there no serious grounds for revocation of the grant already issued to Cecelina. I have said that s.76 of the Law of Succession Act would apply to necessitate that a party so applying must meet the expectations of that section which are that she must show;

“(a) That the proceedings to obtain the grant were defective in substance;

(b) that the grant was obtained fraudulently by the making of a false statement or by the concealment from the court of something material to the case;

(c)that the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant notwithstanding that the allegation was made in ignorance or inadvertently;

(d) that the person to whom the grant was made has failed, after due notice and without reasonable cause either

(i) to apply for confirmation of the grant within one year from the date thereof, or such longer period as the court has ordered or allowed: or

(ii) to proceed diligently with the administration of the estate;

or

(iii) to produce to the court, within the time prescribed, any such inventory or account of administration as is required by the provisions of paragraphs (e) and (g) of section 83 or has produced any such inventory or account which is false in any material particular; or

(e) that the grant has become useless and inoperative through subsequent circumstances”

13. Beatrice so far as I can see has only said that Cecelina filed this Cause stealthily and without

informing her. I note however that Cecelina in her evidence said that she informed her mother-in-law of her intention to do so and I note that her father-in-law is one of her guarantors in her petition. It is instructive in any event that Beatrice's sole intention is not the proper administration of the deceased's estate but a selfish intention to acquire land for herself. Whereas the deceased had children, nowhere in her pleadings nor in evidence does she say what should happen to them. I see no reason in any event to give her a place of priority while the deceased's spouse is alive and ready to administer his estate. Beatrice's spouse is alive and although estranged, she has other lawful avenues to compel him to give her a place of abode if that is her quest. In the circumstances of this case I see no basis for me to revoke the grant lawfully issued to a deserving spouse.

14. Having found as I have for the Administrator, I find no reason to either allow the objection or revoke the grant already issued and all claims by Beatrice Marete must be dismissed and specifically, the Application dated 8.2.2005 is hereby dismissed with costs to the Administrator.

15. Orders accordingly.

Dated, signed and delivered in open court at Meru this 26th day of October 2006

ISAAC LENAOLA

JUDGE

In the Presence of

Petitioner present

Objector present

ISAAC LENAOLA

JUDGE