



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

**Misc Civ Case 189 of 1998**

**ESTHER WAMUYU GITHUI**

**ROSE GATHIGA GITHUI.....**

**APPLICANTS**

**VERSUS**

**WANJIRA GITHUI .....**

**..... DEFENDANT**

**R U L I N G**

Esther Wamuyu Githui and Rose Gathigia Githui (hereinafter referred to as the applicants) have come to this court under Section 76 of the Law of Succession Act and Rule 44 of the Probate and Administration Rules seeking to have the grant of letters of administration issued to Wanjira Githui on 1<sup>st</sup> April 1998 by the Senior Resident Magistrate’s Court Karatina in Succession Case No. 53 of 1987 revoked and annulled on the ground that the grant was obtained fraudulently by the making of a false statement and concealment from the court of a material fact.

It is the applicant’s contention that Wanjira Githui (hereinafter referred to as the Respondent) misled the court by posing as the only widow of Githui Karumaindo (hereinafter referred to as the deceased) and concealing the fact that the deceased had another wife and children all of whom survived the deceased and are beneficiaries to his estate.

The Respondent on her part maintains that she is the only lawful widow of the deceased and the only beneficiary to his estate and therefore there was no fraud or concealment of a material fact as the applicants are not related to the deceased and are imposters.

The main issue for determination is whether the Respondent was the only widow of the deceased or whether the 1<sup>st</sup> applicant was also a wife to the deceased and whether the applicants are entitled to the deceased’s estate as beneficiaries.

Following directions given on 17<sup>th</sup> January 2002 for the application to be determined by way of viva voce evidence; the applicants testified and also called three other witnesses whilst the Respondent was the only witnesses.

In a nutshell the evidence for the applicants was that the Respondent was the deceased's first wife. Their marriage was under kikuyu customary law and had no issues. In 1971 the deceased married the 1<sup>st</sup> applicant under kikuyu customary law as his second wife. The 1<sup>st</sup> applicant had 1 child born out of wedlock and 6 issues of the marriage with the deceased. The 1<sup>st</sup> applicant lived with her children on the deceased's land known as Ruguru/ Kiamariga/534. The Respondent also had a house on the same land but also operated a Bar business where she sometimes stayed. The deceased died in a car accident on 3<sup>rd</sup> July 1997. Both the Applicants and the Respondent participated in the funeral arrangements, photographs were produced in support of this.

Relationship between the applicants and the Respondent soured after the burial of the deceased. The Respondent moved to her business premises but continued harvesting the coffee on the deceased's land.

The applicants later discovered that the Respondent obtained letters of administration which she had confirmed in her favour without disclosing that the deceased had another wife or children.

The Respondent on her part maintained that she was the only wife of the deceased. She denied that the 1<sup>st</sup> applicant was married to the deceased or that her children were children of the deceased. She testified that she only saw the 1<sup>st</sup> applicant on the day the deceased was being buried. She denied that the applicants were living on the deceased's land or that they had a house there.

Having considered and evaluated all the evidence adduced, I am satisfied that the Respondent did not speak the truth when she alleged that she was the only wife of the deceased. The evidence of Michael Mwangi Nguyo and John Ngatia Gakuru both of whom are relatives of the deceased as well as the evidence of Wilfred Ndoria Karangi the are Chief all confirm that the deceased was polygamous and that the 1<sup>st</sup> applicant was the deceased's 2<sup>nd</sup> wife and was therefore together with her children entitled to the estate of the deceased. This explains why the applicants were involved in the deceased's burial and why they were living on the deceased's land. It is evident that the letters of administration were fraudulently obtained and that there was concealment of a material fact with regard to identification of the Beneficiaries entitled to the deceased's estate.

I do therefore grant this application and order that the grant issued to the Respondent on 1<sup>st</sup> April 1998 be and is hereby nullified and land parcel No. Ruguru/Kiamariga/534 registered in the name of the Respondent pursuant to the nullified grant to revert back to the name of the deceased.

***Dated signed and delivered this 18<sup>th</sup> day of October 2006.***

**H. M. OKWENGU**

**JUDGE**