



**REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA  
AT NAIROBI (NAIROBI LAW COURTS)**

**Succession Cause 588 of 1985**

**IN THE MATTER OF THE ESTATE OF GATHOKORE MUGO – DECEASED**

**JUDGMENT**

Beth Njambi filed the Petition for Letters of Administration based on “valid oral will” annexed to the petition made by the deceased four days prior to his death. The petition was filed on 28<sup>th</sup> August, 1985.

Objection for grant was filed on 23<sup>rd</sup> March 1986 by Macharia Mugo. He also filed an application to strike out the petition.

The case thereafter was referred to District Officer Kandara Division, Muranga District for Arbitration vide order dated 30<sup>th</sup> May, 1986.

The award of the Arbitrators stated that the Respondent cannot be the beneficiaries in the estate of Gathokore Mugo the deceased herein and that the disputed land was left to the mother of the applicants and her children. This award, although applied to be set aside, has not been set aside in absence of non-prosecution thereof.

Macharia Mugo filed an application dated 17<sup>th</sup> February 1988 to set aside the said award.

On 16<sup>th</sup> March, 1988 one Daniel Ng’ang’a Mugo filed a preliminary objection on 16<sup>th</sup> March 1988. He claimed to be a beneficiary having been referred in the deceased’s will. He also made interlocutory application against Wanyoike Macharia and Mugo Ng’ang’a.

Thereafter the matter was referred to the Public Trustee by an order dated 18<sup>th</sup> January, 1994 and issued on 27<sup>th</sup> April 1994. I do not see any report or action by the Public Trustee.

An application was filed by the Petitioner and Daniel Ng’ang’a Mugo for order and intention to commit the aforesaid two persons to Civil Jail for contempt of Court order.

While all the aforesaid orders and various applications were pending, the petitioner Beth Njambi applied for certificate of confirmation of grant on 29<sup>th</sup> April, 2004 and the same was granted on 16<sup>th</sup> June, 2004.

Thereupon the said Macharia Mugo claiming to be a beneficiary in the estate filed summons for revocation dated 25<sup>th</sup> October 2004.

I have thus to determine this summons for revocation. It is alleged by him that Beth Njambi and Daniel Ng’ang’a Mugo are not beneficiaries of the deceased but are the daughter and the son respectively of the

deceased's brother, that is to say, they are niece and nephew of the deceased.

The summons is supported by the affidavit of the applicant stating that the Beth Njambi and Daniel Ng'ang'a Mugo are related to the deceased as aforesaid. He said he is a step-brother to the deceased and that if the estate is distributed he and his three sons namely Mwangi Ng'ang'a, Wanyoike Macharia, Mwangi Mugo and Mwangi Wanyoike will be rendered homeless because these families have been living on the parcel of land.

The affidavit sworn by one Mwangi Kuria on 25<sup>th</sup> October 2004 annexed a sale agreement which speaks only for agreement for sale of land of Kimani son of Ndonga. It does not mention who is the purchaser and from whom the purchase price in terms of goats was received. The name of Macharia Mugo the objector herein is shown as a recipient of goats with another person named as Cege Kihara. This fact definitely shows that he was not the giver of the purchase price.

Similarly an affidavit sworn by one Kariuki Kagiri on 25<sup>th</sup> October 2004 avers that he was one of the witnesses who collected purchase price. This fact of him receiving price also is not reflected in the sale agreement. At the most his name appears as one of the witnesses.

That is the evidence of the objector.

As against that I have a replying affidavit sworn by Daniel Ng'ang'a Mugo on 16<sup>th</sup> February, 2005.

He denied the averments made in these affidavits specifically the one stating that the objector and his family are living on the land. He has averred that they have trespassed onto the land around 2000-2001. It is definitely on record of this case that there have been several applications to that effect and restraining orders against the family members of the objector have been made. As stated earlier in this Judgment, an application to commit his sons to Civil Jail for contempt also was filed.

The facts deponed in the said affidavit to the effect that a HCCS No. 656 of 2001 to evict the objector and his sons from the suit property i.e. LR No. LOC 3/Mukuria/150 is pending, and that the objector is an owner of land bearing L.R. No. LOC 3/Mukuria/704, as well that of LR. No. LOC. 3/Mukuria/151 are not denied or traversed. It is also not denied that the last property aforesaid was sub-divided into two being L.R. No. LOC. 3/Mukuria/704 & 707. Copies of necessary documents are annexed to the Respondent's affidavit.

This old matter has to be finalized and I have also stated in brief the chequered history thereof. From the facts on record, I am satisfied that the objector is unable to prove the claim of suit land being held in trust for him and sons. It is proved adequately by the Respondent that he owned another land adjacent to his step-brother (deceased herein).

Hence I find that the objector has failed to prove his claim and his summons for revocation of grant dated 25<sup>th</sup> October 2004 is dismissed.

I shall not make any order as to costs as both parties were parties in delaying the prosecution of the matter.

Dated and signed at Nairobi this 6<sup>th</sup> day of December, 2006.

**K. H. RAWAL**

**JUDGE**

**6.12.06**