



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**  
**AT ELDORET**

**PROB & ADMIN 93 OF 2003**

**IN THE MATTER OF THE ESTATE OF JACOB KAMUNYU MUCHIRI**

**JUDGMENT**

Jacob Kamunyu Muchiri died intestate on 2/7/2001. Priscilla Mumbi Kamunyu and Sammy Githiora Githui, who claimed to be his wife and son respectively hereinafter called (“the Petitioners”), lodged their petition for letters of administration of his estate on 17/4/2003, in which they named Anne Wangare as the other widow of the said Kamunyu.

Among the listed survivors were Job Muchiri, Sammy Githiora Githui and Joseph Kanyari.

Though the Grant of Letters of Administration intestate was issued in favour of the two petitioners, Anne Wangare Kamunyu, a wife to the deceased and his mother Rebecca Njoki Muchiri applied for its revocation on various grounds, but mainly that the same was obtained fraudulently by the concealment of material facts.

Before I evaluate the evidence on record, I feel that it important that I give a brief history of the claim by the two who claim to be the widows, and by the mother of the late Jacob Kamunyu Muchiri.

Ayub Muchiri Mwaura who died on 18.1.2000, was survived by his wife Rebecca Njoki, five sons and four daughters.

However, by the time when Rebecca filed her petition for Letters of Administration her husband’s Estate, Jacob Kamunyu had already died by September 2001. It was Rebecca’s intention, to distribute her husbands Estate amongst all his children, and in which case the share of her late son Jacob Kamunyu would be held by his wife Anne Wangare in trust for the children of their union.

She obtained a confirmation of the Grant on 5/3/2002 and by the time when these objection proceedings were being heard, she had already registered Jacob’s portion in her name.

Coming back to the matter at hand, both Rebecca Njoki and Anne Wangare gave evidence in which Rebecca acknowledged Anne as her son’s only wife. It was clear from her evidence that Anne Wangare and Jacob had not solemnized their marriage in church and that they were therefore married under the Kikuyu customary law.

Though Rebecca was aware that Priscilla and Jacob lived together in Eldoret she however denied having met Priscilla, whom in any event she didn’t recognize as her daughter-in-law.

Anne Wangare, who confirmed that her marriage to Jacob Kamunyu was a customary one, denied any knowledge of Priscilla.

Jacob's brother, who gave evidence as PW4, knew of Priscilla, and he was aware that she lived with his brother in Eldoret. It was also his evidence that according to the Kikuyu customs, a father only pays dowry for his son's first marriage otherwise in case of all other marriages the son has to provide his own dowry. This particular issue was corroborated by PW5 who also claimed to be conversant with Kikuyu marriage customs.

Priscilla's evidence was to the effect that she had met Jacob in 1985 after which they started living together in Eldoret; that she went to her home with Jacob in 1990, that they were then accompanied by Jacob's three male friends; that they met her parents and her other family members; that Jacob paid dowry to her parents and that they continued living together in several estates within Eldoret and finally in Munyaka, within the same town.

It was also Priscilla's evidence that in 1987, following a request by Anne Wangare who had visited her and Jacob in Eldoret, Jacob took her to his home in Burnt Forest where she met his parents; that she lived with Jacob and Anne Wangare for one month after which Jacob's father showed her a place on his land where she could build her house, which she stated, would finally be inherited by Jacob. She built a house in 1987 on the said land but that it was however burnt in 1992 during the tribal clashes. She produced her affidavit sworn on 19/4/1996 in which she deponed that she had been married to Jacob Kamunyu under Kikuyu customary law in October 1991 and she also produced her identity card, which was issued on 28.2.1996 in which she carries Kamunyu's name.

It is clear from the above that having married Anne Wangare under the Kikuyu customary laws, their marriage was polygamous and there would have been nothing wrong for Jacob to take another wife or for that matter other wives, in customary marriages.

There is sufficient evidence on record to show that Jacob took steps and paid dowry for Priscilla, a fact which was confirmed by Priscilla's mother (DW2), who also confirmed that she accepted Jacob Kamunyu offer to marry her daughter, and that she later went to visit Jacob's mother in Burnt Forest. Priscilla confirmed that she lived with Jacob in Eldoret as man and wife, so did one of Jacob's friends, who gave evidence as DW 5, who confirmed having accompanied the two to Priscilla's home in Nyeri and having witnessed the payment of the dowry.

Anne and Rebecca who I shall now refer to as "the objectors" claim that Jacob had only one wife, namely Anne Wangare and that the two had seven children whose names appear on the contentious petition.

It is clear from the evidence on record that though Rebecca and Anne did not recognize Priscilla as Jacob's wife, Priscilla on the other hand acted in the knowledge and belief that she was married to Jacob. This, I believe would explain why she cleared his medical bills for which purpose she used her National Hospital Insurance Card. It would also explain why Rebecca and Anne came to visit Priscilla and Jacob in Eldoret, when Priscilla gave birth to Muchiri, as narrated by DW5.

I have seen the letter, which Priscilla obtained from the Chief on 31/7/2003. It was clearly issued prior to the date when she filed her petition. I have also taken into account Priscilla's evidence on why she was not able to file the relevant consents and do note that attempted to obtain Anne's consent when she went to her in April 2003, but that she was rebuffed. PW3 did in fact confirm having accompanied Priscilla to Anne's home during the said visit and though he didn't know the purpose of her visit, he had however noted that two had quarreled.

Faced with the above evidence, I am convinced that Priscilla was Jacob Kamunyu's wife, with whom they had three children, namely Anne Nyokabi (now deceased), Joseph Kanyari and Job Muchiri. It is also on record that she met Jacob for the first time in 1985, and it is therefore doubtful that Sammy Githiora Githui who was born in 1974 was Jacob Kamunyu's, son but there is ample evidence that Jacob took in Sammy and treated him as one of his own. I am well minded of Section 29 of the Law of Succession Act, Cap 160 of the Laws of Kenya, which stipulates that:

*"For the purposes of this Part, "dependant" means-*

*(a) the wife or wives, or former wife or wives, and the children of the deceased whether or not maintained by the deceased immediately prior to his death;*

*(b) such of the deceased's parents, step-parents, grandparents, grandchildren, step-children, children whom the deceased had taken into his family as his own (underlining mine), brothers and sisters, and half-brothers and half-sisters, as were being maintained by the deceased immediately prior to his death; and*

*(c) where the deceased was a woman, her husband if he was being maintained by her immediately prior to the date of her death."*

Admittedly there is an error in date of the registration of the death certificate, and Kamunyu's name, but in my humble opinion that cannot be attributed to Priscilla Mumbi. In any event, the District Civil Registrar of Births and Deaths, Uasin Gishu District (DW3) informed the court that they were typographical mistakes, which could also be attributed to clerical errors emanating from Government offices. He however confirmed that both certificates were in respect of Jacob Kamunyu who is the deceased herein.

I have looked at the petition and all supporting document and am likewise convinced that she gave all the required information in her petition for by the time of his death, Jacob had no known asset. I therefore find that she did not fail to disclose any material particulars.

That being the case, the two objectors have failed to prove their case against Priscilla and her co-petitioner. I find that Priscilla is entitled to inherit her late husband Jacob Kamunyu. The Grant should be confirmed.

Seeing that the only asset which he would be entitled to is a fifteen (15) acre portion of his late father's land in Burnt Forest, which parcel is currently registered in Rebecca Njoki Muchiri's name, I do order that Rebecca do subdivide the same between Anne Wangare Kamunyu and Priscilla Mumbi Kamunyu who each shall have a life interest over their individual share of the said parcel of land.

This application for revocation, which is otherwise devoid of merit, is therefore dismissed with costs.

Dated and delivered at Eldoret this 29<sup>th</sup> day of September 2005.

JEANNE GACHECHE

JUDGE

Delivered in the presence of:

Mr. Omwenga holding brief for Mr. Onyinkwa for the objectors

Mr. Ngeno holding brief for Mr. Keter for the Petitioner