



REPUBLIC OF KENYA



KENYA LAW
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**In re Estate of Murathe Mwaria (Deceased) (Succession Cause 825 of 2003)
[2004] KEHC 2413 (KLR) (Family) (19 March 2004) (Ruling)**

In Re MURATHE MWARIA[2004] eKLR

Neutral citation: [2004] KEHC 2413 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)

FAMILY

SUCCESSION CAUSE 825 OF 2003

MK KOOME, J

MARCH 19, 2004

IN THE MATTER OF THE ESTATE OF MURATHE MWARIA (DECEASED)

RULING

1. The applicant Samuel Kiuru Muhika filed the summons for revocation of the grant of Letters of Administration made to Zipporah Wanjiku on 25th November 1993. The grant was issued by the Principal Magistrate's Court at Muranga in Succession Cause No. 342 of 1992.
2. The applicant's grounds upon which he is seeking for the grant to be revoked are two fold:
 - 1) The petitioner failed to disclose material facts
 - 2) The petitioner failed to disclose the applicant's interest of 0.6 acres of land held in Trust within the deceased estate
3. The application is supported by the applicant's affidavit sworn on 27th March 2003. The applicant also attached some hand written proceeding, bearing the stamp of chief of Uchu Location. The gist of the matters deponed to in the supporting affidavit are as follows:
 - That during the land demarcation the applicant's father registered 0.6 acres of his land within the deceased estate.
 - That during the deceased life time, there were proceedings before the chief and it was established that the deceased held the 0.6 acres of land in trust of the applicants father.
 - That the petitioner failed to disclose these facts to the court when the grant was issued.
4. The application was vehemently opposed by the respondent who relied on the following grounds:
 - The claim being pursued by the applicant cannot lie in a Succession Cause and hence the entire application is an abuse of the court process.



- The applicant has not disclosed that he is a dependent or beneficiary of the deceased estate, which are the only matters that can be sorted out in a succession cause.
 - The applicants claim for a parcel of land held in trust by the deceased can only be pursued in a civil matter where the circumstances of the alleged trust can be investigated and properly canvassed.
 - The Succession Cause in the subordinate court was properly and procedurally done, the petitioner is the widow of the deceased and all the beneficiaries duly filed their consent. The respondent therefore prays for the Summons to be dismissed as being incompetent.
5. I have evaluated the application, the supporting affidavits very carefully. The petitioner in the subordinate court who was granted the letter of representation is the widow of the deceased. All the children of the deceased duly filed their consents.
 6. The applicant is not claiming to be a dependent and or a beneficiary of the deceased. He is claiming 0.6 acres of land purportedly held in trust by the deceased for the applicant's father. I am not aware whether the applicant has brought these proceedings in his capacity as the personal representative of his father's estate.
 7. However may that as it may, the applicant's claim is based on trust and I agree with counsel for the respondent that the matter is outside the purview of the Law of Succession in a probate and Administration matter cap 160 Section 76 clearly stipulates the grounds upon which a grant may be revoked and if I may summarize
 - It is when the procedure followed in obtaining the grant is defective in substance
 - When the grant is obtained fraudulently by making a false statement
 - Making an untrue allegation of fact essential in point of law to justify the grant
 - Or when the person who has the grant has failed to proceed diligently with the Administration of the estate.
 8. I find the grant was properly applied for by the deceased widow who he the priority under section 35 of Cap 160. the children who are beneficiary interested duly consented.
 9. The applicant not being a beneficiary and not having priority to the grant was not entitled to be notified. Accordingly the application by the applicant is misconceived and should be dismissed with costs to the respondent.

It is so ordered.

RULING READ AND SIGNED ON 19TH MARCH 2004.

MARTHA KOOME

JUDGE

