



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI
CIVIL APPEAL NO 68 OF 1996

PAULINE NDUTA APPELLANT

VERSUS

GITAU MURAGURI RESPONDENT

JUDGMENT

This is an appeal from the Ruling of the Resident Magistrate, Thika (Hon. S. N. Mutuku) in Succession Cause No 42 of 1995 dated 22nd February, 1996. It is based on the following five grounds of appeal:

- “1. The Learned Resident Magistrate erred when she said in her ruling that the Appellant had only called her relatives as her witnesses whereas for example witness No. 4 Ruel Wahinya has no any relationship with the Appellant whatsoever.***
- 2. The Learned Resident Magistrate went wrong by failing to consider that the National Identity Card of the Appellant bears the name of the deceased which is a clear proof that the deceased was Appellant’s husband.***
- 3. The Learned Resident Magistrate erred in relying on a hear say evidence that the deceased was insane whereas no single Hospital document was ever produced in Court to that effect and whereas the deceased was confirmed to have been working and had planted coffee which cannot be done by insane person.***
- 4. The Learned Resident Magistrate further went wrong in failing to consider that the deceased daughter Veronica Wanjiku confirmed that she was the daughter of the deceased on strength of her identity card which bore her father’s name the deceased.***
- 5. The Learned Resident Magistrate erred in failing to consider that the Respondent had obtained the grant fraudulently by making false Affidavit that he was the only person surviving the deceased whereas his father who was the brother to the deceased was still there and alive even if he did not put the name of the appellant as the deceased’s wife.”***

As is evident from the grounds, this appeal is based on the lower court’s findings of facts, rather than on a point of law.

The issue, therefore, before the Lower Court revolved around who is the rightful beneficiary of the deceased’s parcel of Land Loc S/Kabati/139. According to the evidence given before the lower court, the

deceased had at one time been married. He got mentally unstable, and his wife left him. The deceased then lived with his mother, now deceased, and the Respondent, his nephew, took care of him. The Appellant who was working at a neighbour, and who had no place to live, was invited by the deceased's mother to live with her and the deceased. It was from this that the Appellant told the court that she was married to the deceased under customary law and that all the formalities had been carried out.

However, the Appellant did not prove that she was married to the deceased under customary law. There was no evidence of any marriage between the Appellant and the deceased.

Consequently, the Trial Magistrate came to the conclusion based on the evidence before the court that the Appellant was not married to the deceased and was therefore not entitled to any share in his property and further that the Respondent (the deceased's nephew) was the sole beneficiary of the suit land.

I am satisfied that the Magistrate evaluated the evidence before the court correctly, and came to a just decision, and I have no reason to interfere with his decision.

Accordingly, I dismiss this appeal, with costs to the Respondent.

Dated and delivered at Nairobi on this 24th day of June, 2004.

ALNASHIR VISRAM

JUDGE