



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI**  
**SUCCESSION CAUSE NO. 374 OF 2001**  
**IN THE MATTER OF THE ESTATE OF GITHENYA GITUTHU (DECEASED)**  
**INGARA GITHENYAA.....1ST APPLICANT**  
**MARGARET WACEKE KIMARU.....2ND APPLICANT**  
**V E R S U S**  
**JACKSON GITHENYA ITATA.....RESPONDENT**

**R U L I N G**

This application is made by a son and widowed daughter-in-law of the deceased herein. The son Ingara is an old person of 78 years of age and a self confessed illiterate person.

It is not in dispute that the estate comprise of one property on which the families of three sons of the deceased reside, that apart from the 1st Applicant the other two sons are deceased and are survived by their widows and children that the Respondent is a grand-son of the deceased and is the only person who is educated in the entire family and is a torch bearer as well as light and source of direction in all Government matters, as stated in the affidavits of the applicant

While filing the petition he did not mention that his mother was alive and as well described the 2nd Applicant Margaret as a grand daughter to the deceased instead of a daughter-in-law which she is to the deceased.

According to the applicants in nut shell the torch bearer kept them in dark and duped them in believing that he has filed the petition as per the family wishes in dividing the land equally amongst three sons. Under that belief they signed the consent forms. When they realized the fraud and concealment of material facts after going to District Officer's Office, they filed the similar application before the subordinate court at Kerugoya which confirmed the grant. The application was dismissed because of the subordinate court's lack of jurisdiction. That is how they came before this court.

The Respondent does not deny the facts observed as aforesaid and does not deny the allegations of fraud and concealment of material facts. What he is contending is the delay on the part of the applicants to bring this application, the defence of Res-Judicata and states that the applicants consented to presentation and confirmation of the grant. As a matter of fact I do not see any consent form attached to the affidavit. The affidavit does not even mention the consent of all the beneficiaries on 21st June, 1996. The 1st Applicant was also not present in the court when the proceedings to confirm was heard. However, the proceedings before the Tribunal affirm the contention of the applicants, the lack of jurisdiction of the

Tribunal in this matter notwithstanding.

I am not impressed at all by the behavior and explanation of the Respondent. By not mentioning his mother's name as well as his other sibling and beneficiaries ( he has definitely concealed a material fact) similarly by wrong description of the 2nd Applicant/respondent. It is sufficiently shown that he Respondent took advantage of the trust reposed in him by his illiterate elder members of the family and grabbed, if I may say so, the ancestral land wholly in his favour.

The Respondent's desperate effort to show that the applicants' have other land cannot help him without any further evidence to entitle him to bring in that issue in this estate cause. I, therefore, find that the confirmed grant as per the orders made in Murang'a Magistrate's Court Succession Cause No. 55 of 1986 be nullified and be surrendered.

In view of the admitted facts, I can further direct that the grant be confirmed by equal distribution of plot of land Murang'a, Loc.14/Kairo/95 amongst the families of three sons of the deceased, namely:-

- (1) Ingara Githenya 1/3 share,
- (2) Margaret Waceke Kimaru 1/3 share and
- (3) Hannah Wanjiku Itata 1/3 share.

I give the above order despite the fact that Respondent's mother is not an applicant and in view of the admitted fact that Respondent has other siblings. I invoke my inherent power in making the aforesaid order in the interest of justice and to avoid undue delay.

Dated and Delivered at Nairobi this 6th day of March, 2002.

**K.H. RAWAL**

**JUDGE.**