

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (MILIMANI LAW COURTS)
SUCCESSION CAUSE 212 OF 99

WANGUI MBUGUA THUO 1ST PETITIONER/RESPONDENT

V E R S U S

GATHONI THUOOBJECTOR/APPLICANT

J U D G M E N T

Petition was filed by Wangui Mbugua Thuo and Stephen Thuo Mbugua claiming to be the widow and son of the deceased Thuo Wanjiru Kamau. The grant of letters of administration was issued to the said petitioners. Before the grant could be confirmed, one Gathoni Thuo a daughter of the deceased filed an application for revocation and annulment of grant on the ground of fraud by concealment of material facts. She claims to be an unmarried daughter with seven children and living on the estate property. She also avers that the petitioners are in fact the daughter-in-law and grandson of the deceased and not the widow and son as stated in the petition. Joseph Mbugua Thuo who is the husband and father of the 1st Petitioner and 2nd Petitioner respectively corroborated the above averments and deposition of the daughter/objector.

He further stated that Francis Munene Daniel Kamau are also his sons and are not minors as has been stated in the Petition. According to him Francis is married and has his own children and Daniel was born in 1968. A son of the objector also has given evidence to show that he was living on his maternal grandfather's (deceased) plot since 1960. He is married and also lives with his family in a house built on the said plot with the consent of the deceased. From depositions and replying affidavit, it has come out very clearly that the petitioners have committed fraud by misrepresenting themselves as a widow and son of the deceased. They were aware or ought to have known that they were lying as to their relation with the deceased so as to avoid the necessity of obtaining consent from other beneficiaries. They have also deceitfully lied as to the ages of the other grand-sons to secure the same purpose.

When the matter was coming up for hearing of the Petitioner's case (i.e. on 22 nd October, 2002) the date whereof was taken by consent, there was no appearance on the part of the Petitioners or their counsel. I would have no hesitation to presume that their non-appearance was deliberate and with a view to avoid further embarrassment. The upshot of the all aforesaid is that the Applicant has proved that the Grant of letters of Administration issued by the Court to the Petitioners was obtained by fraud and I revoke the same with costs to be paid by the Petitioners personally. To avoid further delay in the administration of estate, I also direct the objector Gathoni Thuo and Joseph Mbugua Thuo to file the petition for letters of administration. I further direct the Petitioners to surrender the original grant to the court registry.

Dated and delivered at Nairobi this 29th day of October, 2002.

K. H. RAWAL

JUDGE.