



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI (NAIROBI LAW COURTS)

Succession Cause 1509 of 2001

**IN THE MATTER OF THE ESTATE OF RUFUS MUNYORI MATHA ALIAS MUNYORI
RUFUS ALIAS RUFUS MUNYORI (DECEASED)**

JUDGMENT

The grant of Letters of Administration in respect of the estate of late Rufus Matha Munyori (deceased) who died on 19th May 1997 was granted on 28th August 2001 to Michael Kiruthi Munyori. The grant was subsequently confirmed on 6th February 2002. The applicant in the Summons for Revocation of the grant that was filed on 15th August 2002 is Truphena Wambui Munyori.

The applicant sought for orders to revoke the grant that was issued and confirmed on the grounds that:-

- (1) That the grant was obtained fraudulently by making of false statements that all the dependants had consented to Michael Kiruthi Munyori obtaining the grant and also concealing from the court the fact of the existence of other dependants.
- (2) That the grant was obtained without confirmation of material facts from the local chief concerned.

The applicant relied on her affidavits in support of the Summons, a supplementary affidavit and several affidavits that were sworn by her children in support of the Summons for Revocation.

In addition to the affidavits the applicant relied on her own evidence, the applicant called evidence from a total of eight (8) witnesses. I have extracted the following summarized facts from their evidence and the applicants affidavits in support of her case.

According to the applicant, she married the deceased in 1967 and they under went the ceremonies of marriage that were conducted under the Kikuyu Customary Law of Marriage. Upon marriage they settled at the deceased parcel of land known as Othaya Ihuririo/252, which is her matrimonial home and the house of her 10 children. They were blessed with ten children namely:

1. Beatrice Wanjiru Munyori
2. Nancy Gathoni Munyori

3. Peter Kihara Munyori
4. Emmanuel Gatonga Munyori
5. Joshua Mwaniki Munyori
6. Catherine Kagure Munyori
7. Titus Wachira Munyori
8. James Kiruhi Munyori (Deceased)
9. Anne Wanyogu Munyori

The applicant was not informed when the petition for grant of Letters of Administration was made in contravention of the requirement that Letters of Administration cannot be granted when a notices to every person(s) entitled in the same degree as or in priority to the applicant have been given notice. The applicant contends that she was a second wife of the deceased, she was married according to the Kikuyu Customary Law, and therefore was entitled to be served with a notice.

The applicant produced several documents to support her assertion that she has had a long association with the deceased and that she has lived on the above parcel of land for many years. She produced birth certificates for 5 children. In all the birth certificates the name of the father is indicated as Rufus Munyori Matha. She also produced school certificates and leaving certificates to show that seven of her children went to school at Ihuririo Primary School which is where the land parcel is situated and that the children were also registered in the schools by the deceased name. She also produced Baptismal Certificates for all the children. All the children except Beatrice Wanjiru who was baptized at African Independent Pentecostal Church of Africa at Ihuririo on 27th February 1966, all the others were baptized at the P.C.E.A. Ihuririo Church in Othaya at various dates.

The applicant also produced a share certificate issued by Iriani Tea Factory Company Ltd. and Tea delivery Sheets to show that she is the registered account holder for the Tea that is delivered to the local factory in respect of this parcel of land.

The applicant also relied on the evidence of her mother Naomi Wanjiku Kirigo, the gist of her evidence was that she received dowry from the deceased in respect of the applicant and that the deceased performed all the marriage ceremonies under the Kikuyu Customary Law of Marriage. The deceased brought the compulsory lamb and goat commonly known in Kikuyu as “Mwati” and “Harika” to signify his intention to get married or “Uthoni”. This was followed by the actual dowry where 30 goats, a bag of sugar and two sheep were brought and slaughtered. This time the applicant had four children with the deceased.

The issue of marriage was also confirmed by PW 8 Stephen Karuri, who testified that he attended the marriage ceremony of the applicant. He was present with the deceased with whom they visited the home of the applicant in 1974 when the bulk of the dowry was taken and the goat to signify marriage was slaughtered. This witness is related to the deceased. According to him the applicant is the second wife of the deceased, she has always lived with her children and cultivated the land at Ihuririo while the deceased first wife lived in Tetu. The deceased kept the two families separate.

There is no need to evaluate the evidence by the children of the applicant save for PW 8 Moses Ndungu Githaiga who is married to the deceased daughter. This witness gave evidence of how he approached the deceased to seek his permission to marry his daughter called Nancy Gathoni Ndungu. He paid dowry to the deceased in 1988. The deceased also gave a note to the applicant dated 17th June 1995 authorizing him to go ahead and solemnize his marriage with his daughter Nancy Gathoni. This letter was produced as evidence.

The petitioner did not call any evidence at all save that he filed a replying affidavit dated 19th September 2002 whereby he says that the applicant was not married to the deceased and that she never occupied the parcel of land at Ihuririo but rather she invaded the land and chased away the workers. He contends that his mother who was married under the African Christian and Divorce Act was the sole wife of the deceased.

The petitioner/respondent did not avail himself in court to testify and be cross-examined on his affidavit or to throw light on the allegations contained in his replying affidavit. His silence can be construed to mean either implied admission and makes the defence advanced in the replying affidavit difficult to believe.

From the applicants evidence I am satisfied that she has made out a prima facie case and in the absence of any evidence that can be said to displace this prima facie case I am of the humble view that her application seeking to revoke the grant should be allowed.

I am satisfied that the applicant was the deceased 2nd wife and that she together with her children ought to have been notified of this petition as they are persons entitled in the same degree to the Letters of Administration or in priority with the petitioner.

Accordingly I hereby revoke the grant that was issued on 28th August 2001 and confirmed on 6th May 2002 and all the consequential transactions effected pursuant to the said grant and more specifically all the transfers effected on original titles Number Othanya/Ihuririo/252 and Tetu/Ichagachiru/379. The Land Registrar Nyeri to revert the above Titles in the deceased names.

In order to expedient this matter and protect the estate from further waste and in exercise of the inherent powers vested in this court under Section 47 of the Law of Succession and rule 73 of the P & A rules, I hereby appoint the applicant Truphena Wambui Munyori and Micheal Kiruhi Munyori as the joint administrators. The joint administrators either jointly or singularly are at liberty to apply for the confirmation of the grant and to prepare a proposed schedule of distribution. The application for confirmation should be served upon all the deceased dependants.

The applicant shall be entitled to the costs of this application.

It is so ordered.

Ruling read and signed on 3rd December 2002.

MARTHA KOOME

JUDGE