



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT MERU**

**ORIGINATING SUMMONS NO. 87 OF 2010 (OS)**

**IN THE MATTER OF LAND PARCEL NO. NYAKI/THUURA/1295 REGISTERED IN THE NAMES OF M'ITWERANDU IGUNDA (DECEASED)**

**IN THE MATTER OF THE ESTATE OF TWERANDU IGUNDA**

**BETWEEN**

**GEOFFREY KAIRITHIA (DECEASED).....PLAINTIFF**

**VERSUS**

**HARRIET KARANDU M'ITWERANDU.....DEFENDANT**

**(Sued as the Administrator of the Estate of TWERANDU IGUNDA)**

**CATHERINE NTIRIITWA MURUGU (Applying as the legal representative  
of the Estate of Geoffrey Kairithia.....APPLICANT**

**SUSAN KAROKI (Applying as the legal representative  
of the Estate of Geoffrey Kairithia.....APPLICANT**

**RULING**

1. The plaintiff Geoffrey Kariithia died on 10.1.2018. Two distinct applications have been filed for his substitution. The first one is dated 25.7.2020 brought forth by Catherine Ntiritwa. The second one is dated 5.10.2020 brought by Susan Karoki. Both have grants in respect of the deceased plaintiff and both have been filed to pursue execution proceedings whereby judgment was delivered in favour of the deceased plaintiff way back on 17.10.2017.

2. The defendant is not opposing the two applications. Both applications were argued orally on 27.1.2021

**The application dated 25/07/2020**

3. This application is based on the grounds on the face of it and on the supporting affidavits of Catherine Ntiritwa Murugu dated 25.7.2020 and 25.1.2021 respectively. The applicant avers that the plaintiff died on 10/01/2018 and that she has been appointed to be the personal representative of his estate vide a grant ad-litem of the Meru High Court dated 4/03/2020 .

4. Mr. Mwanzia, Counsel for Catherine Ntiritwa Murugu stated that his client was married to the deceased in 1993 according to Meru customary laws and they sired two children, one Yvonne Gatwiri and the other Brian Bundi whose ID and Birth Certificates have been attached to her replying affidavit of 25.1.2021. That she had obtained a limited grant for purposes of execution of the decree of the court which had awarded the deceased plaintiff 2 acres. Her intention is to put the 2 cares in the deceased name, file a succession cause and administer the estate of the deceased to the children.

5. That when they served the other applicant Susan Karoki with their application, instead of replying to it, she rushed to court and sought her own grant and she did not inform the court that there was another grant already issued and that the deceased defendant was her aunt, thus her interest are her own and adverse to the plaintiffs interest. He urged the court to dismiss Susan Karoki's application as she will not fight for the estate of the deceased or benefit of the children. That if his client's application is allowed and Susan Karoki has any claim, she can meet with his client in the succession cause.

The application dated 5/10/2020

6. This application is based on the grounds on the face of it and on the supporting affidavit of Susan Karoki, the applicant who avers that she is the sister to the deceased plaintiff. She states that their father one M'Mboroki M'Itiri had sued defendant's father one Twerandu Igunda over the same Land Parcel No. NYAKI/THUURA/1295. Then substitution was done after a family meeting, as the land was used by the whole family and not just the deceased plaintiff. Vide a grant ad-litem of the Meru CMC MISC SUCC No. E4 of 2020 dated 2/10/2020, she has been appointed to be the personal representative of the estate of her brother Geoffrey Kairiithia's estate.

7. Susan Karoki avers that Catherine Ntirritwa Murugu was never married to her brother though they did sire 2 children and that currently Catherine Ntirritwa Murugu is married elsewhere and she is therefore a stranger in the family. She also said that she has no issue dividing the land with the deceased plaintiff's children as the said children were left under her care.

8. She reiterated that the suit land belonged to her father who died during the trial and thus as a family they decided that the deceased plaintiff should be the one to represent the family and later when he died the family chose her to represent them. Thus the suit land has never belonged to the deceased plaintiff but to their father.

9. I have considered the two applications. **Section 54** and **55** of the **Law of Succession Act** provides:

***"A court may, according to the circumstances of each case, limit any grant of representation which it has jurisdiction to make, in any of the forms described in the Fifth Schedule to this Act.***

**Fifth Schedule (14)**

***When it is necessary that the representative of a deceased person be made a party to a pending suit, and the executor or person entitled to administration is unable or unwilling to act, letters of administration may be granted to the nominee of a party in such suit, limited for the purpose of representing the deceased in the said suit, or in any other cause or suit which may be commenced in the same or in any other court between the parties, or any other parties, touching the matters at issue in the cause or suit, and until a final decree shall be made therein, and carried into complete execution".***

10. Both applicants herein have obtained limited grants for letters of administration ad litem in respect of the deceased plaintiff. It is not within this courts knowledge how the same were obtained nor is it within its jurisdiction to determine who the beneficiaries are. In **PLR -vs- JNR & Another (2013) eKLR** Waitaha J. distinguished jurisdiction of the High Court and the ELC court as follows;

***"...in addition, in order to determine the suit, this court would be required to determine...whether the Plaintiff is a beneficiary of the deceased's estate and therefore entitled to his estate. The property and the issues to be determined in the suit fall under the realm of the Law of Succession Act... However matters of ownership and entitlement to a deceased person's property including land are governed by the law of Succession Act and are to be determined by the Family court. Thus by virtue of Section 2 (1) of the Succession Act, this court lacks jurisdiction to determine the same..."***

11. Coming back to the issue at hand, the fact is that there is a decree by this court which needs to be executed for purposes of effecting transfer of 2 acres from land parcel No. Nyaki/Thuura/1295. And the issue then arises in whose name should the land be transferred to?

12. The **Supreme Court in the case of Raila Odinga and Others v IEBC and Others SCK Petition No. 5 of 2013 [2013]eKLR** held that;

***"A Court of law should not allow the prescriptions of procedure and form to trump the primary object, of dispensing substantive justice to the parties. This principle of merit, however, in our opinion, bears no meaning cast-in-stone, and which suits all situations of dispute resolution. On the contrary, the court as an agency of the processes of justice, is called upon to appreciate all the relevant circumstances and the requirements of a particular case and conscientiously determine the best course."***

13. Taking into account all circumstances of this suit, I have considered that a grant was issued to Catherine Ntirritwa on 4.3.2020. The applicant known as Susan Karoki has not disputed that she was aware of the existence of this grant by the time she went to court to get hers. Susan Karoki ought to have challenged the issuance of the earlier grant instead of going back to court to get a grant of her own months later on 2.10.2020. Thus Susan Karoki is guilty of material non- disclosure since the earlier grant was obtained for purposes of representing the deceased in the current suit.

14. Another issue to note is that the applicant known as Catherine has intimated to the court that she desires to file a succession cause so that the property is distributed as the estate of the deceased. On the other hand, the applicant known as Susan desires to distribute the property by herself. The wording in the judgment delivered on 17.10.2017 was that:

***"The plaintiff having obtained ownership by way of adverse possession of 2 acres to be excised from land parcel No. Nyaki/Thuura/1295 be registered as proprietor of 2 acres thereof. The defendant to transfer 2 acres to be excised from parcel No. Nyaki/Thuura/1295 to the plaintiff and should the defendant refuse or fail to do so, the Deputy Registrar is authorized to sign all documents necessary for the transfer of the opposite land to the plaintiff. As the plaintiff has intimated that he seeks no costs, no costs are awarded"***

15. Thus the wording of the judgment is to the effect that the 2 acres were to be registered in plaintiff's name. The issue as to how that land should be distributed is a matter falling under the succession court. In light of the foregoing, I am inclined to give the following directions;

1) The application by Susan Karoki dated 5.10.2020 is hereby dismissed.

2) The application by Catherine Ntiritwa dated 25.7.2020 is allowed.

3) For avoidance of doubts, the two acres to be excised from parcel 1295 are to be registered in the name of the deceased GEOFFREY KAIRITHIA.

4) Each party to bear their own costs of the applications.

DATED, SIGNED AND DELIVERED AT MERU THIS 17<sup>TH</sup> DAY OF MARCH, 2021

HON. LUCY. N. MBUGUA

ELC JUDGE

**ORDER**

The date of delivery of this Ruling was given to the advocates for the parties through a virtual session via Microsoft teams on 27.1.2021. In light of the declaration of measures restricting court operations due to the *COVID-19 pandemic* and following the practice directions issued by his Lordship, the Chief Justice dated 17<sup>th</sup> March, 2020 and published in the Kenya Gazette of 17<sup>th</sup> April 2020 as Gazette Notice no.3137, this Ruling has been delivered to the parties by electronic mail. They are deemed to have waived compliance with order 21 rule 1 of the *Civil Procedure Rules* which requires that all judgments and rulings be pronounced in open court.

HON. LUCY N. MBUGUA

ELC JUDGE