



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT MURANG'A**

**SUCCESSION CAUSE NO. 896 OF 2013**

**RE ESTATE OF MOHE MWAURA ALIAS MUHIA MWAURA (DECEASED)**

**MONICAH WAITHIRA MUHIA.....1<sup>ST</sup> APPLICANT**

**STANLEY GITHUKA MUHIA.....2<sup>ND</sup> APPLICANT**

**VERSUS**

**JOHNSON MUIRURI MUHIA.....RESPONDENT**

**RULING**

1. Mohe Mwaura *alias* Muhia Mwaura (hereafter *the deceased*) died intestate on 9<sup>th</sup> June 1989. He was polygamous and was survived by his two wives Saraphina Njeri Muhia and Monicah Waithira Muhia.
2. Nearly twelve years later, Saraphina Njeri petitioned the subordinate court at Thika for a grant of letters of administration to the estate. A grant was issued to her on 2<sup>nd</sup> July 2013 and confirmed on 12<sup>th</sup> March 2003. Following the death of the administrator, her son Johnson Muiruri Muhia (now the respondent) was substituted in her place.
3. The 1<sup>st</sup> applicant lodged summons for revocation of the grant before the High Court on 20<sup>th</sup> April 2015. She averred that she was married to the deceased in 1973 and that the grant was issued fraudulently and in secret. In particular, she claimed that her consent was not obtained and that a portion of the estate was sold to a stranger, Charles Kamande, well before the grant was confirmed in the lower court.
4. On 2<sup>nd</sup> March 2021, the court directed that *viva voce* evidence be taken. The 2<sup>nd</sup> applicant testified on behalf of the applicants. The respondent also testified.
5. A grant, whether or not confirmed, may be revoked either by the court *suo moto*; or, by an application made under section 76 of the **Law of Succession Act** (hereafter *the Act*).
6. It is common ground that the deceased was polygamous. Although the estate *may* have been divided fairly by the administrator, the respondent and his counsel, *Ms. Wambui Ngugi*, freely conceded that the administrator applied for letters of administration without obtaining the *consent* of the beneficiaries from the 2<sup>nd</sup> house of Monicah Muhia. Clearly, the latter were not heard by the lower court on the mode of distribution.
7. I thus readily find that the grant was obtained secretly and concealment of material facts. Section 45 of the Act prohibits any person from intermeddling with the estate of a deceased person. The sale of 1 acre of the deceased's land in Loc.5/Gitura/3 to a purchaser, Charles Kamande Waweru, before confirmation of the grant was also irregular. In addition, some two properties were also left out of the schedule of assets held by the deceased.
8. For those reasons, I have no hesitation to revoke the grant issued to Saraphina Njeri Muhia on 6<sup>th</sup> November 2002 (and rectified on 12<sup>th</sup> June 2013) and confirmed on 12<sup>th</sup> March 2003 (and amended on 12<sup>th</sup> June 2013). I order that a fresh grant be issued *jointly* to Monicah Waithira Muhia and Johnson Muiruri Muhia.
9. Regarding the distribution of the estate, I find that section 40 of the Act is generally applicable in this case. Power also reposes in the court to order distribution of the estate in a fair manner. See **Rono v Rono & another** [2008] 1 KLR (G&F), [2005] 1 KLR 538.
10. The respondent generally admitted in paragraphs 8 to 17 of the replying affidavit sworn on 26<sup>th</sup> February 2016 that it was the wish of the deceased that all the assets be divided *equally* between the two houses.

11. Loc.5/Kagumoini/334; Loc.5/Gitura/451 and Loc.5/Gitura/3 were subdivided by the respondent under the grant that has now been revoked. To obviate further and unnecessary costs; and, in the interest of justice, those properties shall be re-distributed to the intent that each of the two houses shall get a half share. The same principle shall be applied in the division of two other pieces of land belonging to the deceased that had were left out of the schedule of assets being Loc. 5/Gaichanjiru/6 and Mitubiri Wempa/Block 1/2653.

12. My final orders shall be as follows:

a) That the grant first issued to Saraphina Njeri Muhia on 6<sup>th</sup> November 2002 (and rectified on 12<sup>th</sup> June 2013) and confirmed on 12<sup>th</sup> March 2003 (and amended on 12<sup>th</sup> June 2013) is hereby *revoked*.

b) That a fresh grant shall be issued *jointly* to Monicah Waithira Muhia and Johnson Muiruri Muhia.

c) That the estate of the deceased shall be divided *equally* between Monica Waithira Muhia and Johnson Muiruri Muhia in *trust* for the children from each of the two houses of the deceased and more particularly as follows-

(i) Mitubiri/Wempa/Block 1/2653 shall be divided *equally* between Monica Waithira Muhia and Johnson Muiruri Muhia.

(ii) Loc.5/Gaichanjiru/6 shall be divided *equally* between Monica Waithira Muhia and Johnson Muiruri Muhia.

(iii) The former title Loc.5/Gitura/3 has been subdivided into 4 portions as per the mutation form attached. Accordingly, two of those portions being Loc.5/Gitura/1930 and Loc.5/Gitura/1933 shall be transferred wholly to Monica Waithira Muhia. The other two portions being Loc.5/Gitura/1931 and Loc.5/Gitura/1932 shall go to Johnson Muiruri Muhia.

(iv) For the avoidance of doubt, the earlier transfer of 1 acre to a purchaser known as Charles Kamande Waweru out of the original title of Loc.5/Gitura/3 is hereby declared null and void.

(v) The former Loc.5/Kagumoini/334 has also been subdivided into 2 portions. Accordingly, one of those portions being Loc.5/Kagumoini/2305 shall be transferred wholly to Monica Waithira Muhia. The other portion being Loc.5/Kagumoini/2306 shall go to Johnson Muiruri Muhia.

(vi) The former Loc.5/Gitura/451 has also been subdivided into 2 portions being Loc.5/Gitura/1938 and Loc.5/Gitura/1939. One of those portions which is being cultivated or occupied by Monica Waithira Muhia shall be transferred to her. The other shall remain in the name of Johnson Muiruri Muhia.

d) That there shall be no order on costs.

It is so ordered.

**DATED, SIGNED AND DELIVERED AT MURANG'A THIS 5<sup>TH</sup> DAY OF OCTOBER 2021.**

**KANYI KIMONDO**

**JUDGE**

**Ruling read in open court in the presence of:**

Applicants in person.

No appearance by counsel for the respondent.

Ms. Dorcas Waichuhi, Court Assistant.