



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**FAMILY DIVISION**

**SUCCESSION CAUSE NO. 2392 OF 2009**

**IN THE MATTER OF THE ESTATE OF MBUTHI MURU (DECEASED)**

**JUDGMENT**

1. The contestation herein is between the deceased widow Eunice Muthoni Mbuthi (widow) and the deceased nephew, (deceased sister's son) James Kinuthia Karanja (applicant).
2. After a successful citation the applicant filed and obtained grant of letters of administration in this same estate in Succession Cause No. 1774 of 2008; the grant was issued to him on the 1<sup>st</sup> of December, 2009. On her part the widow equally petitioned for grant and one was issued to her on the 13<sup>th</sup> of August, 2010.
3. The two matters have since been consolidated and the subject of this judgment is the application dated 28<sup>th</sup> August 2012 where the applicant seeks for revocation of the grant issued to widow on 13<sup>th</sup> of August 2010 on grounds that the same was defective as there already existing another grant; that she obtained the same fraudulently by concealment of material facts as she did not respond when cited though she was served, she was aware of the other cause; she failed to inform the court of other beneficiaries of the land subject matter L.R. No. Dagoretti/Riruta/1241; and that the grant issued to the applicant supersedes the one issued to the widow.
4. Apart from the above grounds the applicant claims that the said property belonged to his grandmother; is clan land; that his grandfather being deceased at the time of demarcation and the deceased being the first son he was registered as proprietor of the family land as was custom then of the agikikuyu and therefore the deceased held the said property in trust for the family comprising of his mother her three daughters and himself. The applicant is laying claim on the share of his mother. It was also his evidence that he grew up in his grandmother's homestead upon his mother's death but later the deceased chased him away.
5. On her part the widow maintains that the applicant as a nephew cannot administer his uncle's estate, where the widow and her children are alive. Further she denies that the deceased held the property in trust for his siblings, she questioned why the applicant had not pursued his claim during the deceased life time.
6. The applicant's witness an elder Michael Njuguna Kimani from Kanung'aga village explained the applicant's claim as he said he is known to the family of the deceased. He recalled that in 2005 the clan elder one Thiong'o Nginyaiyu (since deceased) summoned him in a sitting where the deceased, his sisters Beth Wanjiru Muuru and Nyokabi Muuru, the applicant and his sister Virginia (since deceased) were in attendance. The meeting was to resolve a dispute relating to the land subject matter as the applicant and his sister had complained against the deceased. He further stated that at the said meeting the deceased sisters Beth Wanjiru Muuru and Nyokabi Muuru also claimed a share in the property. He informed the court that the elders made a finding *inter alia* that the deceased had been nominated the muramati and the property was family property and he should share the property with his 3 sisters.
7. The widow has not controverted the above facts that the land initially belonged to her father in law Muuru Igiria who predeceased her mother in law Muthoni Igiria and that during demarcation the elders appointed the deceased herein being the 1<sup>st</sup> son to hold the family land in trust for the family.
8. The above facts having not been challenged the court is inclined to believe the same as such. The court further recognises that the above practice where the older son would be registered to hold land in trust for the larger family was prevalent amongst the Agikuyu in the early years when Adjudication and demarcation of land took place.
9. The court also finds that the doctrine of trust as recognised both by the Land Registration Act and the Law of Succession Act do come into play in this matter and therefore holds and finds that the deceased held the property subject matter in trust for the larger family.
10. And therefore, based on the above it is this court's opinion that Section 38 the Law of Succession comes into play. The deceased siblings 3 sisters and/or their estate, his only brother having died leaving no family behind have an interest in the property alongside the deceased in equal proportion.
11. Also bearing in mind the circumstances of this matter the court is of the view that it would be efficacious to revoke both the grants issued to the applicant and the widow on the 1<sup>st</sup> of December, 2009 and 13<sup>th</sup> August, 2010. And in place both Eunice Muthoni Mbuthi; the widow and James Kinuthia Karanja; the applicant are appointed as co-administrators.
12. Due to the age of the matter the two are directed to apply for confirmation of the grant herein within 60 days of this judgment.
13. Each Party to meet his/her costs.

DATED, SIGNED and DELIVERED at NAIROBI this 1<sup>ST</sup> DAY OF OCTOBER, 2020.

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ALI-ARONI

JUDGE