



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MERU**

**SUCCESSION CAUSE NO. 174 OF 2009**

**IN THE MATTER OF THE ESTATE OF MBOROKI MWARIA - DECEASED**

**JULIA KAIRIGO M'ARIMI.....PETITIONER**

**VERSUS**

**LUCY MWARI KIRUGI.....OBJECTOR**

**CHARLES KIRIMI KIRUGI.....APPLICANT**

**RULING**

Grant of Letters of Administration to the estate of the late Mboroko M'Mbwira alias Mboroki Mwaria was issued to Julia Kairigo M'Arimi on 19<sup>th</sup> January 2016.

By an application dated 27<sup>th</sup> July 2016 Julia Kairigo filed summons for confirmation of grant and the same was allowed on 3<sup>rd</sup> April 2017. By an application dated 25<sup>th</sup> July 2017 Charles Kirimi Kirugi sought that grant made to Julia Kairigo be revoked on ground the deceased was his father's brothers and that the deceased and his father were buried in suitland which is an ancestral land.

He claimed he had several developments on suit land including semi permanent house, Macadamia trees, coffee trees and Napier grass among others. He claimed the Respondent had illegally and forcefully cut down 800 coffee trees which belonged to him and had threatened to evict him. He said the petition seeking grant of Letters of Administration was filed secretly and grant obtained by making a false statement and concealment from the court of material facts to the case.

Application was heard by way of viva voce evidence. The chief of Kiregara location testified that only one beneficiary to the estate was identified to him and he wrote letter dated 15<sup>th</sup> August 2012 to that effect. He said that the father in law to the objector had land to which they petitioned for Letters of Administration and land was shared between Charles Kirimi – son to Lucy Mwari and brother in law to Lucy.

He said Zakayo Mwirigi was residing with the father on Mboroki's land and that is why they objected to succession cause. The applicant and objectors land was identified as LR Abothuguchi/Kariene/122. Charles Kirimi the applicant testified and reiterated what the chief said. He said he was born and brought up on LR Abothuguchi/Kariene/98 which the deceased left for his father who was to take 2.5 acres and the balance was to go to Julia Kairigo who also stayed on suitland. Applicant said that in the year 2000 he left the suit land to his mother Lucy Mwari. He confirmed that Julia Kairigo was only child to the deceased and LR 98 belonged to the deceased.

He said his father didn't claim land from the deceased. He said that the deceased held land in trust for his father. He admitted that LR Abothuguchi/Kariene/122 is registered in the name of his grandfather. He said his father and brother were buried on LR 98 is occupied by an interested party. He said his father was given land by his uncle the deceased as a gift as he used to take care of him.

2<sup>nd</sup> Applicant's witness Joseph Muriuki said the applicant was his cousin. He said that Julia Kairigo was given one acre of land out of LR 98 but she got entire parcel after succession. He said the land was left to applicant's father. He said he knew when succession cause was filed and he was aware when Lucy Mwari filed objection to grant of Letters of Administration. He said applicant should be given 2.5 acres of land from LR 98. He said that deceased said now he wished his land to be shared before his death but the wishes were not written. He said Lucy Mwari was buried on Kirimi's land. He said Kirimi was staying in Mutego Market where his mother was buried. He said that Kirigi had not petitioned for Letters of Administration to the deceased persons estate by the time he died in 2000.

The 3<sup>rd</sup> applicant's witness chief Kirigara testified and said he became chief of 17<sup>th</sup> July 1999, after deceased had died. He said that Lucy Mwari was staying on suit parcel. He said that he issued letter to Julian Kairigo the only daughter of the deceased to petition for Letters of Administration. He said he doesn't know how the applicant and Lucy Mwari entered Suitland. He said nobody was occupying the land

currently except there was some work going on.

Upon close of objectors/applicants case his counsel was to consult him with a view of seeking redress in the Environment and Land court for his claim of trust but when matter came up Mr Gichunge Advocate said that a date for ruling should be taken as all parties had testified.

Ms Wang'ombe on the other hand sought for another date but didn't give reasons for seeking adjournment. When parties failed to file submissions by 14.1.2019 and a date for ruling was taken.

On perusal of court records it appears the interested parties who filed response to application for revocation shown on 19<sup>th</sup> September 2017 never testified and it is his advocate who informed court that he had testified.

The court will rely on his affidavit to determine application for revocation.

The issues for determination are whether the applicant has satisfied the court that grant made herein should be revoked; whether this court has jurisdiction to declare that the deceased held Land No. LR Abothuguchi/Kariene/98 in trust for the applicants father.

The 2<sup>nd</sup> applicants witness Joseph Muriuki confirms they were aware when the petitioner filed this cause. The reason they want land to be given to the applicant was because his father took care of the deceased. They claimed that the deceased held land in trust by the chief confirmed the applicants father had land No. 122- Abothuguchi/Kariene where applicants mother was buried. This court finds that applicant has not satisfied the court that grant made herein should be revoked.

Secondly this court is not the proper forum for him to claim that court should declare that the deceased held land in trust for his father there is a claim to be lodged in the Environment and Land Court.

The application dated 25<sup>th</sup> July 2017 is dismissed. No orders as to costs.

**HON. A.ONG'INJO**

**JUDGE**

**RULING DELIVERED, DATED AND SIGNED IN COURT ON 14<sup>TH</sup> FEBRUARY 2019.**

**In the presence of:**

C/A:

Petitioner:-N/A

Objector:-Ms Wambulwa holding brief for Ms soi for Objector.

Interested party – present in person

Mr Kithinji Advocate for interested party – N/A

**HON. A.ONG'INJO**

**JUDGE**