



**REPUBLIC OF KENYA**

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

**SUCCESSION CAUSE NO. 23 OF 2009**

**IN THE MATTER OF THE ESTATE OF SILAS MURITHI MUGAMBI**

**LUCY KINANU.....1<sup>ST</sup> PETITIONER**

**GEORGE KOOME MURITHI.....2<sup>ND</sup> PETITIONER**

**VERSUS**

**LILLIAN REGERIA NKARICHIA.....INTERESTED PARTY**

**RULING**

1. I have before me an Application dated 16<sup>th</sup> March 2016 seeking for the revocation of the grant issued on 20<sup>th</sup> August 2013 by this Honourable Court. The application is expressed to be brought under Section 44, 76 and 73 of the Law of Succession Act.

2. The Applicant is supported by an affidavit sworn by Lillian Regeria Nkaricha. More specifically, it was claimed that the Grant was obtained fraudulently by making false statement and by concealment to the Court something material to the case. She averred that the petitioner failed to disclose to the Court that the Applicant was married to the deceased.

3. The application was opposed by the 1<sup>st</sup> Petitioner who denied that the applicant was ever married to the deceased. She averred that the cause was gazetted and no objection was raised. And that the letter of introduction by the Area Chief, Ntima Location dated 25/2/2008 confirmed the dependents of the deceased. She also relied on the deceased eulogy and obituary to disapprove the Applicant's claim. She was categorical that the deceased was married to her mother (now deceased) through Christian Marriage and hence no way the deceased could have contracted a Customary Marriage with the Applicant.

**Submissions**

4. Parties agreed to canvass the application by way of written submissions. Both parties filed their written submissions. The Applicant restated her averments but cited; **Succession Cause No. 1935 of 2003 In the matter of the estate of Mwaura Gichicio Mburu (deceased)**.

5. The petitioner submitted that the applicant has failed to establish her claim to the required standard of proof. She relied on the cases of **Lewis Karungu Waruiri v/s Moses Muriuki Muchiri, BritestonePte Ltd v/s Smith & Associates for East Ltd, Naomi Wangechi Munene & Anor v/s Dorcas Wanjiru Gitonga [2016]**

**ANALYSIS AND DETERMINATION**

**Revocation of the Grant: legal threshold**

6. The circumstances in which a grant may be revoked or annulled are set out in **Section 76 of the Law of Succession Act** as follows:

**s. 76 Revocation or annulment of grant A grant of representation, whether or not confirmed, may at any time be revoked or annulled if the court decides, either on application by any interested party or of its own motion—**

**a. that the proceedings to obtain the grant were defective in substance;**

**b. that the grant was obtained fraudulently by the making of a false statement or by the concealment from the court of something material to the case;**

**c. that the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant**

**notwithstanding that the allegation was made in ignorance or inadvertently;.....**

7. With judicious alertness and wit, I have carefully analyzed the averments made by the parties, their rival submission and the applicable law. I see the issue to be; whether or not the Applicant herein was a wife of the deceased for purposes of succession law. If she succeeds to prove her claim, she will also succeed in insisting that her consent to file the petition ought to have been sought and obtained. This is important consideration in the revocation application for as a wife, she stands in equality with the 1<sup>st</sup> petitioner in applying for grant.

8. The Applicant herein only relies on the Letter of the chief, Taita Location which avers that the Applicant was customarily married to the deceased herein. The letter from the Chief does not however give detail of the marriage of the Applicant to the deceased. The letter does not also state when the deceased was domiciled in his locality. See Section 46 of the Law of Succession Act.

9. Whoever alleges must prove. The Applicant alleges customary marriage and ought to present evidence that proves the marriage. I expected her to call witnesses who were present during the ceremony and give details of the ceremony. Witnesses familiar with the particular custom on marriage would have been profitable to the application before me. None was called. See **Section 51 of Evidence Act Cap 80 and Rule 64 of Probate & Administration Rules and In re Estate of James Meme Anampiu (Deceased) [2018] eKLR**

10. It is also peculiar that the applicant does not state the year they were married or the consummation of the marriage or details of cohabitation. She only talks of “customary marriage” without indicating the particular relevant tribe or custom. These matters have been left for the Court to speculate or assume.

11. The petitioners presented the eulogy and the Obituary that states that the deceased was married to Tsillah Karegi and was survived by 3 sons and 3 daughters. The Letter of introduction from the Area Chief Ntima Location, where the deceased was domiciled prior to his demise added savory the averments by the petitioner. In addition, she annexed copy of the Certificate of Marriage No. 446421 showing that the deceased married Tsillah Karegi on 28<sup>th</sup> August 1958.

12. When I place matters herein on the measure, the Applicant has failed to prove that she is a wife of the deceased. The applicant lacked material respects of proof; and the court is not satisfied to revoke the grant. Accordingly, I find that the Application lacks merit and is dismissed. Given the nature of these proceedings, I order each party to bear own costs.

Dated, signed and delivered in open court at Meru this 5<sup>th</sup> March 2019

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F. GIKONYO

JUDGE

IN PRESENCE OF

M/s Wanjohi for petitioner

Muchiri for interested party

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F. GIKONYO

JUDGE