



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NYERI**

**HIGH COURT SUCCESSION NO. 1050 OF 2009**

IN THE MATTER OF THE ESTATE OF MUCHINA MURIUKI ALIAS GABRIEL MUCHINA MURIUKI (DECEASED)

**PETER MACHARIA MUCHINA.....APPLICANT**

**VERSUS**

**1. WANGUI MWANGI KIBUI**

**2. JULIANA NJERI GICHOHI**

**3. MWANGI GICHOHI**

**4. GACHIE GICHOHI**

**5. WAMBUI GICHOHI**

**6. WANJIKU GICHOHI**

**7. WANGUI GICHOHI**

**8. MUTHONI GICHOHI.....RESPONDENTS**

**RULING**

On 16 March 2018, this honourable court delivered a judgment on a protest filed by the 1<sup>st</sup> respondent protesting against the distribution of the intestate estate of the late Muchina Muriuki as proposed by the applicant; the estate was made of a parcel of land known as Title No. Iriaini/Kiaguthu/1075. In my judgment, I dismissed the protest and allowed the summons for confirmation of grant by the applicant in the terms that this land be divided into three equal shares and each of these shares be registered in the names of the following people:

**1. Wangui Mwangi Kibui (absolutely)**

**2. Peter Macharia Muchina**

To hold for himself and in trust for the rest of the children of Mary Njoki Muriuki who have been named as follows:

i. Mwangi Muchina

ii. Ann wanjiku Muchina

iii. Mary wangui Muriuki

iv. James Muchina

v. Grace Wairimu Muchina

vi. Selifa Mumbi

vii. Charity Nyawira

### 3. Juliana Njeri Gichohi

To hold for herself and in trust for the rest of the children of Wacuka Gichohi who have been named as follows:

- i. Mwangi Gichohi
- ii. Gachie Gichohi
- iii. Wambui Gichohi
- iv. Wanjiku Gichohi
- v. Wangui Gichohi
- vi. Muthoni Gichohi

A certificate of confirmation of grant in this regard was issued; however, the 1<sup>st</sup> respondent who is the applicant's joint administrator in the administration of the deceased's estate could not co-operate in the execution of the transmission documents and generally in the completion of the administration of the deceased's estate. For this reason, the applicant filed the summons dated 1 November 2018 seeking to have the deputy registrar of this court execute the documents necessary for transmission of the estate to the respective beneficiaries. He also sought to have the Nyeri District Land Registrar dispense with the production of documents that ordinarily should have been produced by the 1<sup>st</sup> respondent and the rest of the respondents who are her siblings and who, apparently, are also hesitant to produce their documents or execute their part in those documents.

In her replying affidavit opposing the application, the 1<sup>st</sup> respondent deposed that she did not agree with the judgment of this honourable court and had in fact filed a notice of appeal with the intention of challenging it in the Court of Appeal; however, upon reflection, she was considering withdrawing the notice and instead filing an application for review since she now has new evidence which the court was not privy to at the time it made its decision.

This information, according to the 1<sup>st</sup> respondent, was that as at 16 December, 2003 when the deceased died, the land known Title No. Iriaini/Kiaguthu/162 had not been subdivided; it was subdivided on 3 January, 2007 into two parcels, being Title Nos. Iriaini/Kiaguthu/601 and Iriaini/Kiaguthu/602. Title No. Iriaini/Kiaguthu/601 was later sub-divided into three other parcels being Title Nos. Iriaini/Kiaguthu/1073, 1074, and 1075.

According to the 1<sup>st</sup> respondent, Title Nos. Iriaini/Kiaguthu/1073 and Title Nos. Iriaini/Kiaguthu/1074 were transferred to the applicant's late mother and having so benefited the applicant was not entitled to a share of the deceased's estate again.

In a supplementary affidavit filed by the applicant, he exhibited a court order issued by this court in Civil Suit No. 230 of 1987 for the subdivision of Title No. Iriaini/Kiaguthu/601 so that Mary Njoki Muriuki would get 1.5 acres of that particular parcel of land. I suppose it is as a result of this subdivision that she got Title Nos. Iriaini/Kiaguthu/1074.

In my judgment, I had established as a fact that the deceased did not have a family of his own but that he had been survived by his three sisters one of whom is the 1<sup>st</sup> respondent. The others were Wachuka Gichohi Kamau and Mary Njoki Muriuki both of whom are deceased as well. The latter was the applicant's mother.

In that judgment I also established that the deceased had not transferred the parcel of land referred to as Title No. Iriaini/Kiaguthu/1074 to Mary Njoki Muriuki in his lifetime because there was no proof of such a transfer. It has now come out in the uncontroverted supplementary affidavit of the applicant that the transfer was in fact as a result of a court order and not an inter vivos transfer by the deceased as suggested by the applicant.

Be that as it may, the application before court is not that of review of the judgment. I understood the 1<sup>st</sup> respondent to say that she is considering filing such an application.

The judgment which the applicant is keen on executing was delivered way back in March, 2018 more than a year ago. There is nothing to show that besides the notice of appeal, the 1<sup>st</sup> respondent has taken any step towards filing the substantive appeal and prosecuting it. As much as she has stated that she intends to file an application for review of the judgment rather pursue an appeal, no satisfactory reason has been why such step has not been taken more than one year since the judgment sought to be reviewed was delivered.

It is also worth noting that no application of whatever form has been made to stay the execution of the judgment.

The respondent's conduct speaks of a person who is only interested in frustrating the administration and the distribution of the deceased's estate for no apparent reason. In these circumstances I do not see why the applicant's application should not be allowed. Accordingly, I hereby allow it with costs to the applicant. It is so ordered.

**Signed, dated and delivered in open court this 8<sup>th</sup> day of July, 2019**

**Ngaah Jairus**

**JUDGE**