



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

SUCCESSION CAUSE NO.65 OF 1999

IN THE MATTER OF THE ESTATE OF M'MIRITI THIORA (DECEASED)

CHARLES MURANGIRI.....PETITIONER

-VS-

FESTUS KING'ORI.....OBJECTOR

J U D G M E N T

1. **M'MIRITI THIORA** ("the deceased) died on 31st October, 1988 as confirmed in the DCI report dated 16th April, 2019. According to the Chief's letter of introduction dated 26th February, 1999, the deceased was survived by; **Sarah Nceri M'Miriti** (widow), **Festus King'ori** (son) and **Charles Murangiri Nkoroi** (grandson).

2. The petitioner petitioned for grant of letters of administration intestate where he stated the deceased's assets as being **Abothoguchi/Kariene/1878** (1.214 Ha), **Abothoguchi/ Kariene/1880** (1.7Ha) and **Abothoguchi/Kariene/539** (0.38Ha). The grant of letters of administration intestate was issued to him on 29th October 1999 and confirmed on 17th July 2000. The entire estate was distributed to him.

3. Festus King'ori ("the objector") raised an objection vide a Chamber Summons dated 18th April, 2001 under **sections 71 (2) and 76 of the Succession Act and Rule 44 of the Probate and Administration Rules**. In the Summons, the objector sought among other orders the revocation and or annulment of the grant.

4. The grounds upon which the application was made was set out in its body and the supporting affidavit of **Festus Kingori Miriti** ("the objector") sworn on 18th April, 2000. He contended that the cause was filed secretly and without his consent considering that he is the biological son of the deceased and that the petitioner was looking for potential buyers of the estate property.

5. The Summons was opposed by the petitioner, **Lucia M'Itwamwari** and **M'Nkoroi M'Miriti** through their replying affidavits sworn on 4th June 2001. They deponed that the deceased had 5 children; **M'Nkoroi M'Miriti**, **Lucia M'Itwamwari**, **Evangeline Nkunya**, **Marieta Kathambi** and **Rosetta Nkogwe**. That the objector was a stranger to the estate, was not a son of the deceased and was neither cultivating any of the suit properties nor had a home thereon.

6. The matter was heard vide *viva voce* evidence. **OW1 Festus Kingori Miriti** relied on his affidavits dated 4th February and 8th March 2019, respectively. He told the court that the deceased had two wives, Nyai M'Miriti who bore the above named five children and Ncheeri M'Miriti his mother who gave birth to him and his brother Kiruja (*deceased*). He was brought up in the home of the deceased and was living there on parcel No. 1880 until 1999. After the death of his mother, he ran away from home out of fear because his brother had died a suspicious death.

7. **OW2 Stephen Kiuga Laregi**, nephew to the deceased and a clan elder, supported the evidence of the objector. He stated that he used to live in Nairobi and when he came home, he used to find the deceased living with the objector. He added that he knew two properties of the deceased one with King'ori and the other with M'Nkoroi (*father of the petitioner*). But the petitioner chased away the objector from his piece of land.

8. **PW1 Charles Murangiri** stated that the deceased was his grandfather through **M'Nkoroi M'Miriti**, his father. That the only child of the second wife of the deceased was **Robert Kiruja**. He stated that at the time he was filing the cause, the only children of the deceased living were **Nkoroi**, **Lucia** and **Marrieta**. As at the time of the trial, only **Marrieta** was still alive.

9. He further testified that he took over succession of his grandfather because the deceased had placed his hands on him. That the children of the deceased knew about these proceedings but never objected. He denied ever evicting the objector from the deceased's home contending that the objector had never used any of the deceased's properties.

10. **PW2 M'Nderi M'Twamwari**, a clan mate to the deceased told the court that he used to talk a lot with the deceased. That at no time the deceased ever told him that he had other children with his second wife apart from **Kiruja**. That the deceased had informed him that the petitioner was to take all his properties.
11. Both parties filed their submissions which this court has taken due regard of.
12. The issue for determination is; ***whether the grant should be revoked and if so, how the estate should be distributed.***
13. **Section 76 of the Law of Succession Act (“the Act”)** provides the instances when a grant may be revoked. These include that; the grant was obtained fraudulently by the making of a false statement or concealment from the court something material or 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.
14. In this case, the objector contended that the grant was obtained fraudulently by making false statements and concealment from the court of material facts. That he was a son of the deceased and his consent was never obtained neither was he made aware of the cause. According to him, he was the son of the deceased through the deceased's second wife, **Ncheeri M'Miriti**
15. The petitioner was of the contrary view, that the deceased was a stranger to the estate and not a son of the deceased. **PW2** could not recall when he first saw the objector. He only came to know him after the deceased married the objector's mother.
16. The letter of introduction that commenced these proceedings was procured by the petitioner. The chief clearly indicated that the deceased was survived by a widow, **Serah Nceri M'Miriti**, the petitioner (a grandson) and the objector (son).
17. The current chief of the location from where the deceased hailed appeared and testified. He produced that letter and confirmed the same to be genuine.
18. Despite the petitioner procuring the said letter which gave him the locus to bring these proceedings, he attempted to disclaim it when he testified in court on 13th March, 2019. It should be recalled that since October, 1999 when he lodged these proceedings together with that letter, the petitioner had not sought to challenge its contents. He was attempting to do so 20 years later when questioned about its reference to the objector as a son of the deceased!
19. When he prepared the petition and later the application for confirmation, the petitioner swore that the deceased was only survived by the petitioner alone. That was obviously false. It turned out at the trial that as at the time the petitioner was filing the Cause, there were other survivors of the deceased, ie. **the widow** (mother to the objector), **Nkoroi Miriti**, **Lucia M'Mwari** and **Marriette Nkanata**.
20. Had the petitioner disclosed to court through his affidavits that the said persons survived the deceased and were still alive, the court would have demanded a consent executed by them to allow the petitioner lodge the Cause and even demand their presence in court before distributing the entire estate to him.
21. When questioned about it, he stated that he did not tell the chief about the said survivors. He stated on oath:
- “Because the chief is from the neighborhood and knows the family, I saw no need to inform him of the deceased's children who were alive. ...***
- I only disclosed myself as the only survivor. I did not include the names that were in the chief's letter in that affidavit. I decided not to include them because they were not from the deceased's family. The chief is a neighbor”.***
22. After seeing the witnesses testify, I did not believe the petitioner and his witness. The petitioner was hell-bent to disinherit everyone except himself. Although he admitted that the widow, (his step mother) was left in his hands, he never shared anything to her when he distributed the estate in July, 2000. As at that time, the widow was still alive.
23. To my mind, the objector had proved that the grant was obtained fraudulently by the making of a false statement that the petitioner was the only survivor of the deceased. He was obligated to obtain the consent of the other beneficiaries in terms of **Rule 26 of the Probate and Administration Rules**.
24. The court doubts that the widow knew about these proceedings. Under **section 66 of the Act**, she ranked in priority to the petitioner. The petitioner considered her an outsider and may have feared that involving her would have notified the objector of these proceedings. He maintained that notwithstanding the names of the two being in the chief's letter, which he relied on to commence these proceedings he still considered them to be outsiders.
25. On this ground, the grant cannot stand and the same is hereby revoked.
26. The next issue is whether the objector was a son of the deceased and therefore entitled to a share in the estate. The objector and his witness testified that he was a son through the deceased's second wife. The second wife is said to have died way after the grant had been confirmed. She was neither involved nor informed of these proceedings.
27. Although no birth certificate was produced by the objector, his evidence seemed plausible. There was no dispute that he was a son of **Serah Nceri Miriti** the second wife of the deceased. I am alive to the fact that the petitioner relied on the affidavits of his father **M'Nkoroi**

M'Miriti and **Lucia M'Itwamwari** sworn sometimes in June, 2001 in opposition to the objection. However, the two were neither involved in these proceedings and the same were never tested in cross-examination.

28. The petitioner told the court that the chief who wrote the letter of introduction dated 26th February, 1999 was a neighbor to the deceased and that he knew the deceased's family well. That chief wrote as early as February, 1999 that the objector was a son of the deceased. The petitioner did not challenge that fact by way of taking a Citation or all together reject that letter. He used it to be issued with the grant.

29. The objector explained to court why he was not in occupation of any of the properties of the deceased. I believed the testimony of the objector. On a balance of probability, I accept that the objector was a son of the deceased.

30. Accordingly, I allow the application dated 18th April, 2001 and make the following orders: -

a) the grant of letters of administration intestate issued to Charles Murangiri on 29th October 1999 and confirmed on 17th July 2000 is hereby revoked.

b) a fresh grant of letters of administration is hereby issued to Charles Murangiri and Festus King'ori, jointly.

c) the parties to file affidavits on their preferred proposed mode of distribution of the estate within 30 days.

31. This being a family matter, I will make no orders as to costs.

It is so decreed.

DATED and DELIVERED at Meru this 19th day of September, 2019.

A. MABEYA

JUDGE