



**REPUBLIC OF KENYA**

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

**SUCCESSION CAUSE NO. 672 OF 2015**

**(FORMERLY SPM SUCCESSION CAUSE NO. 79 OF 2015)**

**IN THE MATTER OF THE ESTATE OF THE LATE MUGAMBI MUKETHA -(DECEASED)**

**JANET GAAJI MUCHUNKU.....PETITIONER**

**VERSUS**

**LEAH MUKWANJIRU MWIANDI.....RESPONDENT**

**R U L I N G**

1. This cause relates to the estate of the late Mugambi Muketha (deceased) who passed on sometime in 1960s domiciled in Karongoni Sub-Location, Karingani. The estate in this cause comprises that property known as **Mwimbi/Kiraro/261** measuring (0.25 ha). The deceased died living behind two children Janet Gaaji Muchunku (deceased) and Mbae (deceased). Janet Gaaji Muchunku petitioned for Letters of Administration initially but Leah Mukwanjiru Mwiandi cross petitioned for the same objecting to Janet Gaaji's application on the ground that Mugambi Muketha left no children and since she was married to Mwiandi Wa Rwiro (deceased) brother to Mugambi Muketha she should be granted letters of administration in respect to his estate.

2. This court entertained the objection by Leah Mukwanjiru Mwiandi but before the ruling the Petitioner (Janet Gaaji) passed on and the court ruled that any representative from Janet Gaaji should apply for substitution and declined to appoint Leah Mukwanjiru Mwiandi as the administratrix. However no person turned up on behalf of the late Janet Gaaji with the view to substituting her and this court was left with no other option but to let Leah Mukwanjiru Mwiandi to be the administratrix on 4<sup>th</sup> May, 2016.

3. Upon confirmation of grant on 12<sup>th</sup> October, 2017 David Kariuki Muchunku, came up with Summons for Revocation of Grant dated 17<sup>th</sup> October, 2017 stating that he was a son to Janet Gaaji (deceased) who was a daughter of the deceased herein. He has accused the Respondent (Leah Mukwanjiru Mwiandi) for concealing from this court material facts. This is the application that is the subject of this ruling.

4. The Respondent has opposed this application through a Replying Affidavit sworn on 14<sup>th</sup> November, 2017. In the said affidavit the Respondent has dismissed the applicant as an imposter and fraudster who has no relations with the deceased. According to her the applicant is not a dependant and has deposed that she is the only person close to the deceased herein by virtue of having been married to his brother.

5. In his evidence in court the applicant told this court that her late mother Janet Gaaji was married to Patrick Muchunku who was his father. The witnesses called to testify Kanampiu Runkungi (PW2), Bundi Karigicha (PW3) and William Kagondi (PW4) all testified and what this court deduced from their evidence is that the late Mugambi Muketha (deceased) was married to one Ciakangori and were blessed with two children Janet Gaaji (now deceased) and Mbae M'Mugambi (deceased reported to have died at young age).

6. I have considered this application and the evidence tendered and the only issue for the determination is whether or not there was material concealment of facts by the respondent and/or whether the grant was issued to her due to an inadvertent mistake.

7. There is no dispute that prior to her demise Janet Gaaji had put up a spirited fight to inherit the estate of the deceased claiming that she was the only surviving child to the deceased. Though the Respondent herein strenuously objected to her claim and applied to be considered as the sole heir, this court through a ruling dated 6<sup>th</sup> October, 2016 declined and gave the personal representative of the late Janet Gaaji Muchunku to apply for substitution. Failure by the applicant herein to move this court on time led to the Respondent being granted a grant of Letters of Administration on 8<sup>th</sup> May, 2017. Although, the applicant has not given the explanation for the delay in moving this court, I find that the issues raised in the application and the oral evidence tendered can only be addressed adequately if the grant issued in this cause is revoked. The same is revoked under **Section 76 of Law of Succession Act** and the confirmation of the same on 12<sup>th</sup> October, 2017 is hereby reversed. I shall exercise my discretion under **Section 66 of Law of Succession Act** and appoint Mukwanjiru Mwiandi the administratrix of the estate of the deceased herein.

I shall grant the applicant herein limited period within which to move this court for substitution upon compliance with the law.

I make no order as to costs at this stage. The applicant is granted 21 days to move this court and default the Respondent or any other party is at liberty to apply.

**Dated, signed and delivered at Chuka this 3<sup>rd</sup> day of October, 2018.**

**R. K. LIMO**

**JUDGE**

**3/10/2018**

Ruling signed, dated and delivered in the open court in presence of Petitioner/Respondent in person and Applicant in person.

**R.K. LIMO**

**JUDGE**

**3/10/2018**