



**REPUBLIC OF KENYA**

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

**MILIMANI LAW COURTS**

**FAMILY DIVISION**

**SUCCESSION CAUSE NO. 98 OF 1992**

**IN THE MATTER OF THE ESTATE OF MUNYIRI MAGENDA (DECEASED)**

**PAULINE WAITHERA.....APPLICANT**

**VERSUS**

**MWANGI MUNYIRI.....RESPONDENT**

**JUDGMENT**

1. The deceased Munyiri Magenda died intestate on 28<sup>th</sup> September 1991. The affidavit in support of the petition for grant filed by the respondent and dated 9<sup>th</sup> December 1991 indicated that the deceased was survived by four sons: Mwangi Munyiri (respondent/administrator) (deceased), Lawi L. Maina Munyiri, Isaac Wambu Munyiri and Julius Muhoria Munyiri. The grant of letters of administration intestate was issued to the respondent on 8<sup>th</sup> April 1992 and confirmed on 26<sup>th</sup> September 1997. The estate of the deceased had two properties: Konyu/Gacuku 215 and Kiine/Thigirichi/264.

2. On 5<sup>th</sup> April 2007 the applicant filed this application to have the grant herein revoked and/or annulled on the grounds that the grant was obtained fraudulently by making of a false statement and by concealment from the court of something material to the case.

3. In the affidavit sworn to support the application, the applicant stated that the deceased had two wives, Elisaha Wambui Munyiri and Joanina Wambui Munyiri, both deceased; that she was the first born daughter of the second wife Joanina Wambui Munyiri and the respondent was her step-brother from the 1<sup>st</sup> wife; that the respondent chased their mother out of their matrimonial home on 1<sup>st</sup> March 1992 after the death of their father and thereafter applied for letters of administration fraudulently misrepresenting to the court that he and his two brothers were the only beneficiaries to the estate of the deceased; that her mother filed a suit in the High Court at Nyei No. 165 of 1995 against the respondent, Maina Munyiri and Wambui Munyiri seeking for orders to return to her matrimonial home but the suit was never heard on merit because her mother subsequently died; and that her mother's house was completely left out of the distribution of their father's estate.

4. The respondent died on 11<sup>th</sup> April 1999 before responding to the application. His brother Lawi L. Maina Munyiri filed his response to oppose the application. It was their case that their late father has only one wife, Elishiba Wambui Munyiri (deceased) and seven children namely Mwangi Munyiri (deceased), Louis Maina Munyiri, Isaac Wambu Munyiri, Julius Muhoria Munyiri, Faith Watere Muraya, Abigail Wambura Kimunya and Esther Wangui Mutahi; that during his lifetime the deceased employed a domestic worker by the name Joanina Wambui and the said domestic worker was never the deceased's wife; that upon the demise of the deceased the domestic worker left since her employment was terminated subject to the demise of the deceased; that the respondent applied for the grant and full administered the estate sharing it equally among the four sons of the deceased; that by the time of his death the respondent had fully administered the estate and each sons had received their titles and settled on their respective portions; and that they were not aware of the suit mentioned by the applicant (HCCC No. 165 of 1995) since they were never served with any court documents in relation to the same.

5. The applicant was represented by Claris Ogangah Advocates from FIDA. The application was filed nine years after the grant was confirmed, and her advocate failed to prosecute the same. This is despite several actions of service to them and to FIDA. Mr. Kimani for the respondent asked that the application be dismissed with costs for want of prosecution. I grant the request and dismiss the application with costs.

6. It should be observed that, in any case, the respondent died in the course of the application and was not substituted. He had not responded to the application. Technically the death killed the application.

7. Further, and on the merits, the applicant's contention that her mother was the wife of the deceased and that she was the daughter of the deceased were denied by the respondent's brother Lawi L. Maina Munyiri, and there was no further affidavit filed by her to challenge his averments. Her claims were not materially substantiated.

8. In all, I dismiss the application with costs.

**DATED and DELIVERED at NAIROBI this 2<sup>ND</sup> day of OCTOBER 2018.**

**A.O. MUCHELULE**

JUDGE