



**REPUBLIC OF KENYA**

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

**MILIMANI LAW COURTS**

**FAMILY DIVISION**

**SUCCESSION CAUSE NO. 1803 OF 2013**

**IN THE MATTER OF THE ESTATE OF STANLEY GAKAMI MACHUA (DECEASED)**

**GEORGE MBIRIRI MACUA.....APPLICANT**

**VERSUS**

**PAULINA KIBUI GAKAMI.....1<sup>ST</sup> RESPONDENT**

**GEORGE WAMAE GAKAMI.....2<sup>ND</sup> RESPONDENT**

**JUDGMENT**

1. The deceased Stanley Gakami Machua died intestate on 9<sup>th</sup> December 2012. According to the affidavit in support of the petition for the grant of letters of administration intestate, the deceased was survived by one widow, Paulina Kibui Gakami (the 1<sup>st</sup> respondent), and two children, George Wamae Gakami (the 2<sup>nd</sup> respondent) and Lilian Ngendo Gakami. The petition further indicated that property known as land registration No. Dagoreti/Mutuini/70 was the only asset forming the estate of the deceased. A grant of letters of administration intestate was issued to the respondents on 23<sup>rd</sup> October 2013, and confirmed on 10<sup>th</sup> June 2014.

2. The applicant George Mbiriri Macua is the brother of the deceased. On 6<sup>th</sup> April 2017 he filed summons dated 5<sup>th</sup> April 2017 seeking the revocation of the grant made to the respondents on 23<sup>rd</sup> October 2013 and confirmed on 10<sup>th</sup> June 2014. He sought an order that the Registrar of Lands in charge of Nairobi be directed to reverse any and/or all entries made against the property known as No. Dagoreti/Mutuini/70 using the said grant. Further, he prayed that an inhibition be registered by the Registrar of Lands Nairobi against Dagoreti/Mutuini/70 until a succession cause is filed, heard and determined in respect to the estate of Hylam Machua Mbiriri who was his father, and the deceased's father. The application was based on the grounds that the grant was obtained fraudulently by the misrepresentation to this court that property known as No. Dagoreti/Mutuini/70 belonged to the deceased when the property actually belongs to the deceased's father Hylam Machua Mbiriri; and for concealing from the court the names of the other children of the deceased thereby excluding them from benefiting from the estate. The application was supported by the affidavit of the applicant dated 5<sup>th</sup> April 2017.

3. The application was opposed by the replying affidavit of the 1<sup>st</sup> respondent dated 4<sup>th</sup> May 2017. She stated that she was the only widow of the deceased with whom she had two children; that the deceased's father owned several properties which he subdivided among his sons prior to his demise, among them Dagoreti/Mutuini/70 which was allocated to the deceased and on which the deceased settled; that it had been acknowledged by the deceased's family during one of the family meetings that Dagoreti/Mutuini/70 belonged to the deceased; that unfortunately, the deceased did not get to transfer Dagoreti/Mutuini/70 to himself before the death of his father or before his own demise; that upon her husband's demise she petitioned for letters of administration over his estate which included Dagoreti/Mutuini/70 to hold in trust for her children; that she did not misrepresent any fact as the disputed property was bequeathed to the deceased by his father before his demise; and that she was the rightful heir of the estate of the deceased who had a legal right to Dagoreti/Mutuini/70.

4. Parties filed their submissions which I have considered.

5. It is not disputed that at the time of his death the deceased was not the registered proprietor of land parcel Dagoretti/Mutuini/70. The parcel was in the name of his late father Hylam Machua Mbiriri. At the time the petition was filed the respondent declared the parcel to be part of the estate of the deceased, which was not true. It was a misrepresentation of a material fact as to the ownership of the property.

6. It is following the application for the revocation of the grant that the respondents, in response, claimed that the parcel had been given to the deceased by his late father but that it had not been formally transferred. This was information that ought to have been given to the court

at the time of the petition, and when confirmation was being sought.

7. Thirdly, because the parcel belonged to the late Hylam Machua Mbiriri, his family, including brothers and sisters of the deceased, were entitled, under **section 51(2)(g)** of the **Law of Succession Act (Cap 160)** and **rule 7(1)(e)** of the **Probate and Administration Rules**, to be informed and their consent sought at the time of the petition and during confirmation. This was not done. It follows that the process leading to the grant was defective in substance.

8. Now that the land parcel Dagoretti/Mutuini/70 belonged to Hylam Machua Mbiriri, the respondents, who had no letters of administration in respect of his estate, had no legal capacity and authority to indulge in his property.

9. Consequently, under **section 76** the grant issued to the respondents on 23<sup>rd</sup> October 2013 and the certificate of confirmation issued on 10<sup>th</sup> June 2014 are hereby revoked.

10. If the title in Dagoretti/Mutuini/70 has changed into the names of the respondents, or into the names of any other persons, the transactions will be cancelled and the title returned into the name of H. Machua Mbiriri alias Hylam Machua Mbiriri.

11. Costs of the application shall be borne by the respondents.

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

**A.O. MUCHELULE**

**JUDGE**