



**REPUBLIC OF KENYA**

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

**SUCCESSION CAUSE NO. 62 OF 2012**

**IN THE MATTER OF THE ESTATE OF MUNYUA NCHEREGERE - DECEASED**

**MURIUKI MUSA HASSAN.....PETITIONER**

**VS**

**ROSAE KANYUA MUSA.....1<sup>ST</sup> OBJECTOR**

**SARAH GAUKU MUSA.....2<sup>ND</sup> OBJECTOR**

**AND**

**NAOMI KAGURI THURANIRA.....1<sup>ST</sup> INTERESTED PARTY**

**CAROLINE KATHURE KIRIGIA.....2<sup>ND</sup> INTERESTED PARTY**

**JEREMIAH KIAMBATI MAJAU.....3<sup>RD</sup> INTERESTED PARTY**

**RULING**

The deceased Munyua Ncheregere died intestate on 15<sup>th</sup> October 1965 domiciled in Imenti North Constituency. He left behind one parcel of land No. Ntima/Ntakira/769 registered in his name.

According to the chief of Ngonyi Location he was survived by Muriuki Musa his grandson. There were also 2 purchasers of portions of the estate namely caroline Kathure and Naomi Muriuki Musa petitioned for letters of Administration to the estate of the deceased as sole beneficiary and upon the Notice of petition being published grant was made to Musa Muriuki.

By application dated 25<sup>th</sup> July 2012, Rose Kanyua and Sarah Gauku sought for orders revoking grant made to petitioner herein.

On 31.7.2012 the court certified the application urgent on account of submissions by applicants advocate that petitioner had concealed fact that he was not the only beneficiary and that his mother who stands in priority to him and his sister were alive.

The application for revocation was heard by viva voce evidence before Justice Makau and determination delivered on 5<sup>th</sup> March 2014 in which it was held in part that:-

“The petitioner did not only conceal the fact of the existency of the applicants but lied to the Area Chief that 1<sup>st</sup> Applicant had refused to co-operate and his mother (Sarah) had been chased away by his father and was married to other 3 men with whom she had children.

It was also held that the purchasers who testified herein in support of the protest were no more than total strangers to the deceased’s estate.

The protester did not testify because as early as 25<sup>th</sup> July 2017 his counsel Mr. Carl Peters started complaining he had not been in touch subsequently the advocate sought for numerous adjournments to serve the client with application to cease acting. That application was not prosecuted.

Finally Mr. Carl Peters Mbaabu Advocate recorded and filed statements of witness who had testified in application for revocation the day matter came up for hearing and those are the witnesses who testified on behalf of the protester on 9.10.2018. Their evidence was similar to

evidence adduced in opposition to application for revocation.

Sarah Gauku testified and said Protester was her son with Musa Hassan who was nephew to the deceased. Sarah said that her and her husband stayed on deceased persons land. She said she was no longer staying on the deceased persons land as purchasers chased her away.

She said Angelo Kaaria was her brother and not her husband and they were staying in different houses in different areas. Sarah Gauku said that Muriuki Musa was about 3 years old by the time deceased died and could not have been taken care of the deceased in his old age.

Gauku said that Muriuki and the Purand the purchasers evicted them from suit land. She said Jackline Wamwea had 2 children with Muriuki. Mr. Mbaabu sought to reopen the protesters case so he could testify and the application was allowed but on the due date the protester was no where to be seen and therefore the matter was set down for Ruling upon filing of written submissions.

In consideration of the ruling by Justice Makau delivered on 5<sup>th</sup> March 2014 and in consideration that the protester failed to attend court and defend his protest this court finds that the estate herein shall be distributed to Sarah Gauku the mother of the Petitioner and the petitioner equally.

The portion due to Muriuki shall be shared equally between him and his children. The share for his children to be held by Sarah and the mother of children in trust.

The purchasers herein have their remedy in suits for refund of purchase price if the portion due to Muriuki is not enough for them to share. The mother of Muriuki and the children of Muriuki should be given vacant possession to portions due to them as per the order of this court.

**HON. A.ONG'INJO**

**JUDGE**

**RULING SIGNED, DELIVERED AND DATED THIS 15<sup>TH</sup> DAY OF NOVEMBER 2018.**

**In the presence of:**

C/A: Kinoti

Petitioner:- Mr Kariuki M for Administrator

Objector: Mr. Mbaabu for Protester

Interested Parties:

**HON. A.ONG'INJO**

**JUDGE**