



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MURANG'A

SUCCESSION CAUSE NO 429 OF 2015

IN THE MATTER OF THE ESTATE OF GICHAGA MUNYUTU, DECEASED

EUNICE WANJIKU P. MUTURI.....APPLICANT

VERSUS

1. GITAU GICHAGA....ADMINISTRATOR/1ST RESPONDENT

2. MUNYUTU GICHAGA.....2ND RESPONDENT

R U L I N G

1. The estate of **Gichaga Munyutu, Deceased**, was distributed vide ***Murang'a SRM Succession Cause No 268 of 1992***. The necessary grant of letters of administration intestate therein was made on 06/05/1993 to **Gitau Gichaga** and issued on 10/05/1993. The same was confirmed on 03/02/1994 and certificate of confirmation of grant of that date issued. It was ordered that the estate of the Deceased comprising two parcels of land be distributed as follows –

LR LOC 20/GIKINDU/GITHURI/195

Gitau Gichaga.....10.0 acres

Eunice Wanjiku P. Muturi.....13.8 acres

Munyutu Gichaga.....10.0 acres

LR LOC 20/GIKINDU/GITHURI/259

To Gitau Gichaga as Sole Proprietor

2. Some 21 years down the line, **Eunice Wanjiku P. Muturi** applied by **summons dated 11/06/2015** for revocation of the aforesaid grant. This ruling concerns that application. The grounds for seeking revocation are the usual statutory ones, to wit, that the grant was obtained fraudulently by the making of a false statement, etc. There are two further grounds however –

(i) That the Respondents “took advantage of the fact that the Applicant is illiterate and misled her into believing that the parcel bequeathed to her by the Deceased person was as indicated, i.e. 14.8 acres but instead they allocated to (her) 13.8 acres only”.

(ii) That the Respondents have already “unlawfully sub-divided the land with several resultant...

parcels totally (at) variance with the confirmed grant”.

The application is supported by the Applicant’s affidavit annexed thereto. In it she gives the factual basis for the application.

3. The Respondents have opposed the application by a replying affidavit sworn by the Administrator/1st Respondent filed on 07/09/2015. In that affidavit are annexed some documents, including mutation forms, which show that the Applicant not only participated in the proceedings before the lower court, but also in the exercise of sub-division of land parcel **LR LOC 20/GIKINDU/GITHURI/195** into the three portions ordered in the certificate of confirmation. It is thus too late in the day for the Applicant to complain over twenty (20) years later that there was fraud or concealment of material facts in the proceedings before the lower court.

4. There is absolutely no reason why the court should interfere with the grant issued and confirmed over twenty (20) years ago, and her application for revocation of grant is hereby dismissed.

5. However, the Applicant’s complaint that the Respondents shortchanged her at the actual mutation (sub-division) of LR LOC 20/GIKINDU/GITHURI/195 appears to have substance. The mutation forms exhibited by the Respondents themselves in the replying affidavit show quite clearly that the Applicant’s portion is smaller than those of the Respondents whereas hers should have been bigger than theirs in accordance with the certificate of confirmation!

6. In the circumstances, justice demands that the resulting parcels from the sub-division of LR LOC 20/GIKINDU/GITHURI/195, that is –

LR LOC 20/GIKINDU/GITHURI/2569

LR LOC 20/GIKINDU/GITHURI/2570

LR LOC 20/GIKINDU/GITHURI/2571

be re-surveyed in order to determine their actual sizes, and whether the sub-division was in accordance with the certificate of confirmation. This exercise shall be carried out by the **Murang’a County Surveyor** who shall file a report in this court within sixty (60) days from the date of delivery of this ruling. Initially the cost of the re-survey shall be borne by the Applicant but ultimately abide the outcome of the re-survey and the further order of the court. It is so ordered.

7. Parties shall bear their own costs of these proceedings.

DATED AND SIGNED AT MURANG’A THIS 6TH DAY OF APRIL 2017

H P G WAWERU

JUDGE

DELIVERED AT MURANG’A THIS 7TH DAY OF APRIL 2017