



**REPUBLIC OF KENYA**

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

**MISC SUCCESSION NO. 29 OF 2016**

**(FORMERLY CHUKA SUCCESSION CAUSE NO. 35 OF 2015)**

**IN THE MATTER OF THE ESTATE OF GABRIEL MBUNA M'MUGAMBI (DECEASED)**

**M'MURITHI MBUNA.....APPLICANT**

**- VERSUS -**

**CHRISTINA KARIMI NJERU.....PETITIONER/RESPONDENT**

**R U L I N G**

1. M'Murithi Mbuna, the applicant herein has taken out summons for revocation of grant dated 19<sup>th</sup> July, 2016 under **Section 76** of **Law of Succession Act** and **Rule 44** of the P&A rules asking this to inter alia revoke a grant of letters of administration given to **CHRISTINA KARIMI NJERU** the Respondent herein on 30<sup>th</sup> March, 2015 and confirmed on 14<sup>th</sup> October 2015.

2. The grounds upon which this application has been brought are listed as follows:-

- a) That the grant was obtained by means of untrue allegations of fact essential on a point of law to justify the grant in that the administratrix left out other beneficiaries.*
- b) That the grant was obtained fraudulently by concealing certain facts material to this cause.*
- c) That the effect of the said certificate of grant has been highly prejudicial to the applicant and other beneficiaries.*

3. The applicant has in his Supporting Affidavit sworn on 19<sup>th</sup> July 2016 deponed that the deceased herein was his brother and that it was wrong for the respondent to lock him out of distribution claiming that the estate herein originally belonged to their late father one **MBUNA M'MUGAMBI** and that the deceased herein held the property forming the estate in trust for the entire family. The applicant has accused his late brother, the deceased herein of disposing of 5.9 acres of land without consent of other family members.

4. The applicant has further deponed that he has settled on part of the estate where he has put up a home adjacent to where the deceased also lived. He has deponed that prior to the demise of the deceased he, together with his son, had sued him in the now defunct Lands Disputes Tribunal which according to him visited the land in question. He has listed a number of grandchildren who he alleges are living on the suit land.

5. Mr. Kijaru counsel appearing for the applicant submitted that the applicant introduced a stranger namely Violet Njoki who benefited from the distribution of the estate and yet she was not a dependant to the deceased herein.

6. The respondent herein did not file any formal response to this application despite having given adequate time to do so. At the hearing of this application, she submitted that she followed her late husband wishes and accused the applicant herein for refusing to get out of the estate to enable her carry out distribution as per the certificate of confirmation. She denied that the estate was an ancestral land insisting that the property **L.R. NO. MUTHAMBI/LOWER KARIMBA/922** belonged to her late husband (the deceased herein). She conceded that she sold a portion of the estate to one Violet Njoki though she could not say when she did so. She justified the mode of distribution adopted saying that all the children of the deceased benefitted. She however admitted leaving out her daughter because in her view daughters should not inherit land from their parents.

7. I have considered this application and the grounds upon which it has been brought. I have also considered the response made orally in court by the respondent with a view to determining the substance of this application. There is no denying that the respondent being the only surviving widow to the deceased was the right person in law to be given preference to administer the estate of the late Gabriel Mbura M' Mugambi (deceased). The applicant claims that he is a brother to the deceased and that he was entitled to a share in the estate by virtue of the fact that his late brother, the deceased herein held the estate herein in trust for his benefit and that of other beneficiaries. The applicant has however laid no evidence to support his claim and if that was the only ground in this application, this court would not have hesitated to dismiss it for lacking in merit.

8. This court has however noted from the petition filed that there appears to have been some misrepresentation made by the petitioner before the court below. For one, the petition listed Violet Njoki Marangu as a dependant, when she admitted before this court that the said person was a purchaser and not a daughter to the deceased as wrongly depicted in the introductory chief's letter dated 14<sup>th</sup> January, 2015 and her affidavit in support of confirmation sworn on 1<sup>st</sup> September, 2015. Apart from this, the respondent/petitioner appears from her conduct that she may have breached the provisions of **Section 55 and 82** of the **Law of Succession Act** by purporting to dispose off part of the estate to the said Violet Njoki Marangu and only came to court to legitimize on illegal transaction through confirmation of grant. I also find that the respondent own admission that she did not mention her daughter named Mukwairu Bolise in the Petition for Letters of Administration on account of being a female, to be contrary to clear provisions of the law under **Section 51 (2) (g)** which requires full disclosure of all the children of the deceased regardless of gender. The value of the estate stated as Kshs.100,000/- also appears to have been a misrepresentation. I also find that she did not involve all beneficiaries to the estate by failing to obtain their consent pursuant to the provisions of **Rule 26(2)** of Probate and Administration rules.

On the basis of the above three reasons this court finds on its own motion that it is necessary for the ends of justice to invoke the provisions of **Section 76** of the **Law of Succession Act Cap 160** Laws of Kenya and revoke the grant issued to the respondent on 8th April 2015 and confirmed on 14<sup>th</sup> October, 2015. A fresh grant shall issue to Christina Karimi Njeru the respondent herein and she is directed to administer the estate in accordance with the law. The distribution that had earlier been made in Chuka **HC Succ. No. 35 of 2015** is reversed together with any consequent distribution estate to the deceased. I shall make no order as to costs because the court has issued the above orders suo moto.

**Dated and delivered at Chuka this 11<sup>th</sup> day of May. 2017.**

**R. K. LIMO**

**JUDGE**

**11.5.2017**

Coram

Before

Hon. R. K. Limo - J

C/A Muriithi

Applicant

Respondent

Muriithi holding brief for Kijaru for protester/applicant

Petitioner in person

**Court**

Ruling signed dated and delivered in the open court in the presence of the petitioner/respondent in person and Muriithi holding brief for Kijaru for protestor/applicant.

**R. K. LIMO,**

**JUDGE.**