



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT KENYA AT MERU**  
**SUCCESSION CAUSE NO. 18 OF 1998**

IN THE MATTER OF THE ESTATE OF THE LATE M'MUKETHA M'ANANGA - DECEASED

FLORENCE MOTUMBOCU M'LIMBERE...PETITIONER/RESPONDENT

VERSUS

MISHECK MUTHURI KITHURE.....1<sup>ST</sup> PROTESTOR/APPLICANT

JANET KAUNDU .....2<sup>ND</sup> PROTESTOR/APPLICANT

JACKSON MUTETHIA.....3<sup>RD</sup> PROTESTOR/APPLICANT

DANIEL MUGAMBI.....4<sup>TH</sup> PROTESTOR/APPLICANT

MARRIETTA KALIUNTO.....5<sup>TH</sup> PROTESTOR/APPLICANT

**RULING**

By an application dated 2<sup>nd</sup> October 2015 the protestors/Applicant's herein sought that there be a stay of the grant of Letters of administration made to Florence M'wotumbocu M'Lumbere and confirmed on 9<sup>th</sup> September 1998 and an order of inhibition to issue against parcel of land No. Njia/Kiego/1287 pending the hearing and determination of application to revoke and/ or annul grant made to Florence M'wotumbocu M'Lumbere on 9<sup>th</sup> September 1998.

The application was supported by the grounds on the face of the affidavit and affidavit of Misheck Muthuri Kithure, Janet Kaundu and Jackson Mutethia. Among the grounds are that the succession cause was filed secretly.

That the petitioner did not seek consent of other beneficiaries of the deceased upon filing the cause and that the grant was obtained fraudulently by making false statements and concealment from court of material facts.

Misheck Muthure Kithure in his affidavit sworn on 2<sup>nd</sup> October, 2015 said that the late M'Muketha M'Ananga was his father's brother. That the 2<sup>nd</sup> protestor, Janet Kaundu is his mother and the 3<sup>rd</sup> and 4<sup>th</sup> Applicants are his brothers whereas the 5<sup>th</sup> applicant is his sister.

He averred that land parcel No. Burieruri 1287 belonged to his grandfather M'Ananga M'Ruciaka who registered same in the name of the deceased herein to hold in trust for the father of 1<sup>st</sup> Applicant who was at the time of gathering very young. He further averred that the Petitioner/Respondent was not the wife of

the deceased herein but rather wife to the deceased person's brother and brother to their father.

He said the petitioner filed the cause without knowledge of any of the family members who are entitled to a share of the estate. He said further that the deceased had no children at the time of his death and the children listed in the petition were sired between the petitioner/Respondent and are Isaack Gichunge and not the deceased. That he was born in 1984 and he found his parents living on parcel no. Njia/Burieri/1287 which was the only property the deceased owned. That his father died long before the cause was filed.

The court was urged to cancel grant issued to Respondent herein as it was issued irregularly based on defective proceedings by concealment of material fact.

In reply to the application to revoke and/or annul the grant, Florence Mwotobochiu M'Limbere in her Replying Affidavit sworn on 11<sup>th</sup> February 2016 in which she is not a wife to the deceased persons half brother and that the deceased person not having been married adopted her husband under Kimeru customary laws as his son. Florence Mwotobochiu M'Limbere confirmed that the applicants are widow and children of his late brother in law Jediel Kithure now deceased who died long after she had finalised the succession cause and transferred land to herself.

She said the said Jediel Kithure and 4 other brothers in law had no complaint about the subject land despite the fact they were alive and only died after the succession cause had been finalised. She said even the only surviving brother in-law M'Mujuri M'Ananga has never claimed the land.

She said that together with her husband they moved to live with the deceased on his land when they had sired 2 children and were blessed with 2 other children while living on the said land.

Land belonging to her mother-in law was shared and registered in the names of her 4 brothers-in law to the exclusion of her late husband who was to inherit from the deceased herein. She said she was under no obligation to seek consent of the applicants as they are not beneficiaries or dependants of the deceased,

She said she ranked her priority to everyone else in filing the cause. She said the applicants are serial liars as they live in their father/husbands land in Kithare and none lived on the suit land including her brothers in laws and their families.

She said the 2<sup>nd</sup> applicant went to suit land long after her husband's death and erected a structure and she was given notice to vacate by the District Officer and the advocate. She said applicants have 2 parcels of land at Kithare and Limoro which the deceased father/husband was content but they are driven by greed to grab her land.

She said the chief, church and any reputable Government leader can verify her averments.

She said the applicants were not the deceased person's dependants and their application should be dismissed.

Mujuri M'Ananga filed a further affidavit shown on 14<sup>th</sup> April 2016 refuting averments in Respondents Replying Affidavit and supporting the application. He averred that the Respondent is a pathological liar and was given a letter by the chief indicating she was wife to the deceased a fact she has contradicted by disclosing she was wife to the deceased persons brother.

In consideration of the instant application to revoke grant made on 30<sup>th</sup> June 1998 and confirmed on 9<sup>th</sup> September 1998 the applicable law is found under section 79 of the Law of succession Act which provides for grounds under which a grant may at any time be revoked or annulled if the court decides either an application by an interested party or of its own motion.

The deceased herein died on 30<sup>th</sup> July 1990 aged 70 years and upon the basis of a letter by chief of

Muringene Location dated 21<sup>st</sup> October 1996 Florence Mwotobochiu M'Limbere who was indicated as the deceased person's wife filed petition for grant of Letters of Administration. The estate of the deceased comprised of one parcel of land namely L.R. Buri –E-Ruri/1287 registered in the name of the deceased.

Grant was made on 30<sup>th</sup> June 1998 by Deputy Registrar High court of Kenya Meru and subsequently on 9<sup>th</sup> September 1998 the petitioner applied for confirmation before expiry of statutory 6 months for reasons given in her affidavit sworn on 7<sup>th</sup> September 1998. There is no annexures to the affidavit as evidence of urgency but again the Deputy Registrar had confirmed the grant on 9<sup>th</sup> September 1998.

Based on the chief's letter that the petitioner was a wife to the deceased, Letters of Administration were granted. When it turns out that she was not actually the deceased person's wife which she confirms and now claims she is adopted daughter in law to the deceased and that her late husband was half brother to the deceased, that is apparent non disclosure/concealment of material facts. The information coming out now should have been discussed by the chief letter and the petitioner in her petition in the various affidavits she swore in her quest for the letters of Administration. The issue of the deceased holding land in trust for himself and his younger sibling has arisen and that is a matter that cannot be resolved through affidavit evidence. There is overwhelming evidence that the Respondent herein obtained grant fraudulently and her conduct in obtaining confirmation in less than 3 months of the grant being made goes a long way to support the claim of fraud.

The Respondent confirms she didn't notify the applicants or even her surviving brother in law one Munyuri M'Ananga because she had priority to petition for Letters of Administration and had no obligation to inform the applicants to give her consent to petition. Failure to obtain consent of beneficiaries and/or dependants was a ground upon which grant in the Estate of Mwaura Gichuchu alias Mwaura Mbuu was revoked and the same will apply herein. Similar situation arose in the matter of the Estate of Karanja Gikonyo Mwaniki. Even if the Respondent felt she had no obligation to seek consent it is strange that none of her brothers in laws whom she claimed were alive featured nowhere even as sureties to her administration of the estate.

She could not therefore emphatically say that the parents of applicants and her brothers in laws had no complain in her inheritance because there is no evidence she informed them. In any case if she did there is no reason why Chief referred to her as wife and not sister in law to the deceased.

Finally although the issue of jurisdiction of the Deputy Registrar was not raised by any of the parties herein I do find it erroneous that the petition having been filed in High Court the grant and confirmation thereof were made by Deputy Registrar instead of Judge of the High Court under Section 47 of the Act. This is an additional ground which fortifies the basis upon which the grant made herein should be revoked and/or nullified as it seems to have been void ab initio.

In the circumstances the grant of Letters of Administration made by the Deputy Registrar to the Respondent on 30<sup>th</sup> June 1998 and confirmed 9<sup>th</sup> September 1998 is hereby revoked and/or annulled forthwith. Any transactions on parcel of land No. Njia Buri-E-Ruri/1287 pursuant to the void grant also cancelled. The same to revert to the name of the deceased until such time that the estate is properly processed for succession. Costs of application dated 2<sup>nd</sup> October 2016 to be borne by the Respondent.

**Ruling Signed, Delivered and Dated this 15<sup>th</sup> Day of June 2017.**

**HON. A.ONG'INJO**

**JUDGE**

In the presence of:

C/A- Penina

Applicant:- Mr Mutembei Advocate

Respondent:-Mr Mwenda Mwarania Advocate

**HON. A.ONG'INJO**

**JUDGE**