



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

**SUCCESSION CAUSE NO. 155 OF 1992**

**IN THE MATTER OF THE ESTATE OF THE MUGWIRI KIRAGU Alias J.MUTWIRI**  
**MUGUONGO – DECEASED**

**ZAVERIO KABURU KIRAGU.....PETITIONER/RESPONDENT**

**VS**

**FLORA KARIMI MIRIGO.....APPLICANT**

**RULING**

The determination herein relates to the distribution of the intestate estate of Jenesio Mutwiri Kiragu Muguongo alias J. Mutwiri Muguongo who died on 6<sup>th</sup> August 1983 as per certificate number 106330 leaving behind 3 surviving sons and the wife Flora Karimi Mirigo as per chief's letter dated 8<sup>th</sup> January 1992.

The 2 sons were listed as Zaverio Kaburu Kiragu and Kaaria Kiragu Peter swore an affidavit on 31<sup>st</sup> August 1992 consenting to his brother Zaverio Kaburu Kiragu petitioning for the Letters of Administration to the intestate estate of his late father. The estate was indicated as comprised of land Parcel No. Igoji/Kinoro/694 measuring 4.8 hectares and shares in Igoji House Investment Fund as per Certificate No. 925. Grant of Letters of Administration was made to Zaverio Kaburu Kiragu on 14<sup>th</sup> December 1992 and by an application dated 26<sup>th</sup> March 1993. Under Certificate of urgency he applied for confirmation of the said grant. Grant was confirmed on 6<sup>th</sup> April 1993 by Mary Mugo Senior Principal Magistrate.

By an application dated 1<sup>st</sup> March 2002 the widow of the deceased sought that the grant issued and confirmed to Zaverio Kaburu be revoked as she had not been provided for and her step sons had chased her out of her deceased husband's land and rendered her homeless/landless. She said in her affidavit she was not aware of the filing of the succession cause until when the Respondent – Zaverio Kaburu started sharing her husband's estate. She said she was ejected from the land she had lived in and used since her marriage up to 1999. She said Zaverio was not her husband's biological child. She said her right to petition for Letters of Administration superceded those of Zaverio and thus he should have sought her consent.

She said that having been disinherited she was now being housed by her late husband's elder brother M'Irambu M'Mugunenge after interventions by the clan and Provincial Administration failed.

The grant made to Zaverio was revoked /nullified and the widow to the deceased made his Co-Administrator on 22<sup>nd</sup> July 2002. Objection was heard by viva voce evidence. The Protestor Flora Karimi

said she was the only wife of the deceased and they sired one child namely Lucy Kawira who was married. She said that her deceased husband sired 2 sons out of wedlock and brought them home without marrying their mothers in accordance with Meru customary law.

She said she had always used the whole of parcel of land no. Igoji/Kinoro/694 measuring 11.9 acres which had 3000 coffee trees. She said that when she declined to be inherited by the petitioner he started beating her and cut her. She said she left taking with her the deceased title deed.

Flora Karimi and Charles Kiambi said Zaverio Kaburu Kiragu was the deceased person's shamba boy and not son. He said when the step mother wanted Zaverio to leave the home after deceased died he refused and chased her away. That in 1999 Zaverio Chased Flora Karimi from home and she went to stay at his place.

He said Zaverio didn't notify them when he wanted to take grant. He said it is him, his brother and step mother who are entitled to take grant for the estate of their deceased father. He said they had not returned home and they get nothing from the land. He said the name of Zaverio Kaburu should be removed in list of beneficiaries/Dependants as he is not one of them.

Ruling of Hon Justice Makau on 6<sup>th</sup> March 2012 is instructive to the effect that Justice Kassanga Mulwa where Flora Karimi was made Co-Administrator with Zaverio Kaburu and there was no need to call witnesses to resolve the dispute as to whether Zaverio was a proper administrator.

Issue pending before this court is distribution of the estate which counsel for the widow proposes to be done in terms of affidavit sworn on 27<sup>th</sup> January 2017. Zaverio Kaburu Kiragu proposes distribution in terms of his affidavit sworn on 4<sup>th</sup> October 2012 and says in further affidavit sworn on 9<sup>th</sup> March 2017 that Flora Karimi was introducing strangers to the estate. He however doesn't dispute that Flora Karimi sired a daughter namely Lucy Kawira. None of the Administrators explained what happened to Charles Kiambi who testified as 2<sup>nd</sup> protestor witness but seem to agree on Flora, Zaverio, Peter Kaaria and Lucy Kawira.

This cause has been pending in court since 1992 and needs to come to an end. The administrators have failed to agree on mode of distribution and being that this court is court that is guided by the constitution and specifically Article 27 and Sections 40(1) of the Law of Succession Act I do find and hereby order that the estate be shared equally among the surviving beneficiaries/Dependants of the deceased namely:-

1. Flora Karimi Mirigo
2. Lucy Kawira Kiragu
4. Peter Kaaria Kiragu
5. Zaverio Kaburu Kiragu

The costs of the cause to be borne by Administrators equally orders.

Accordingly.

**Ruling Signed, Delivered and Dated this 8<sup>th</sup> Day of June 2017.**

**HON. A.ONG'INJO**

**JUDGE**

In the presence of:

C/A Penina

Applicant:-Mr Mutuma Advocate for Applicant

Respondent:- PIP

**HON. A.ONG'INJO**

**JUDGE**