

IN THE HIGH COURT OF KENYA AT MURANG'A

SUCCESSION CAUSE NO 443 OF 2013

(FORMERLY NYERI HC SUCC CAUSE NO 545 OF 2012)

(FORMERLY MURANG'A PM SUCC CAUSE NO 162 OF 2002)

IN THE MATTER OF THE ESTATE OF ANTONY GITHERE KIRUBI -DECEASED

JOAN NYAMBURA MWANGI.....ADMIN/ APPLICANT

VERSUS

1. EMILIANA WAIRIMU KIRUBI

2. MARGARET WACHUKA KAMAU.....PROTESTORS

J U D G M E N T

1. This cause started off as *Murang'a PM Succession Cause No 162 of 2002*. A grant of letters of administration therein was made to the Administrator herein, **Joan Nyambura Mwangi** (alias **Joan Mwangi**) on 01/11/2002 and issued on the same day. A **summons dated 05/06/2003** for confirmation of grant was subsequently filed. An affidavit of protest was filed on 25/02/2005 by one **Emiliana Wairimu Kirubi**, who described herself as the Deceased's mother. She made her own counter-proposals for distribution. Another affidavit of protest was filed by **Margaret Wachuka Kamau** (on behalf of herself and others). They are all sisters or step-sisters of the Deceased. The cause was then transferred to the High Court at Nyeri, and then on **05/12/2012** to this court, before the protested summons for confirmation of grant was disposed of.

2. Once the matter was in the High Court, another summons for confirmation of grant dated 01/07/2014 was filed. The earlier summons for confirmation dated 05/06/2003 is therefore marked withdrawn. This judgment will thus be in respect to the second summons dated 05/06/2003 for confirmation of grant.

3. I have read the affidavit sworn in support as well as the affidavits of protest. It turns out that the Protestors are the siblings and half-siblings of the Deceased. Their claim in the Deceased's estate is based upon the allegation that the parcels of land comprising the Deceased's estate were at one time one parcel of land which their father owned but which the Deceased had fraudulently caused to be registered in his name and later sub-divided into the various parcels now comprising his estate. For this reason they claim to be entitled to these parcels of land as being part of their father's estate.

4. It is common ground that the parties' father died about two years after the Deceased died. He never brought any claim nor filed suit against the Deceased over the alleged fraud.

5. In the course of these proceedings, when it appeared that the Protestors' claim in the Deceased's estate was based on alleged fraud and trusts, and thus outside the limited ambit of these succession proceedings, the Protestors were accorded time to institute appropriate civil proceedings in a civil court. They did not and the summons for confirmation of grant was fixed for hearing. They did not attend the hearing.

6. The Deceased was survived by a widow (the Administrator) and children (all now adults). They are his rightful heirs. The Deceased's siblings (the Protestors) were not his dependants maintained by him, and cannot be rightful beneficiaries of his estate.

7. In the circumstances, I will allow the **summons dated 01/07/2014** and confirm the grant. Distribution shall be as proposed at paragraph 7 of the supporting affidavit, which proposal was consented to in Form 37. It is so ordered.

DATED AND SIGNED AT MURANG'A THIS 20TH DAY OF JULY 2017

H P G WAWERU

JUDGE

DELIVERED AT MURANG'A THIS 21ST DAY OF JULY 2017