



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KITALE

SUCCESSION CAUSE NO. 207 OF 2009

IN THE MATTER OF THE ESTATE OF THE LATE MUTURI MUGO KINYIITA *alias*  
MUTURI MUNDIA (DECEASED)

JOHN MUGO GITAU.....1ST OBJECTOR/APPLICANT

NJAGUA NJOROGE.....2ND OBJECTOR/APPLICANT

VERSUS

WANJIKU MUTURI.....PETITIONER/RESPONDENT

**RULING**

1. The summons for revocation and/or annulment of grant dated **19/12/2013** seeks orders that:-

***(a) The Grant of Letter of Administration Intestate issued to Wanjiku Muturi together with the Certificate of Confirmation of Grant issued on 3rd June, 2010 be and is hereby revoked or annulled.***

***(b) Pursuant to the granting of prayer (a) above, the title deed issued to the petitioner for land parcel number Ngenda/Wamwangi/130 be cancelled and the title thereof do revert back to the name of the deceased.***

***(c) Costs of this application be borne by the petitioner.***

2. Simultaneously with the filing of the said summons, an application dated **19/12/2013** was filed. The application essentially sought preservatory orders which were allowed in the interim. What remained of this application was the prayer for the deposit of the title deed in court which prayer will be taken care of by the determination herein.

3. The application herein relates to land parcel No. **Ngenda/Wamwangi/130** measuring **11.90 acres** which is the only property the subject of this succession cause.

4. On **28/9/2009** the respondent, **Wanjiku Muturi** petitioned this court for a Grant of Letters of Administration to the estate of her late husband, **Muturi Mugo Kinyita *alias* Muturi Mundia** (hereinafter the deceased). The petitioner listed herself and seven children of the deceased as the beneficiaries. All the seven children gave their consent to the making of the grant. The Grant was issued to the respondent and was subsequently confirmed on **3/6/2010**.

5. The applicants are brothers to the deceased. According to the applicants, the parcel of land the subject matter of these proceedings is family land. That prior to the land adjudication in 1957, the suit land belonged to their father, **Mundia Gikonyo**. It is further stated that the land was being held by deceased in trust for the other beneficiaries. The applicants contention is that the respondent obtained the Grant fraudulently, secretly and by concealment of material facts to the court. The applicants have averred that the respondent failed to disclose other beneficiaries and failed to notify or inform them of the petition and failed to obtain their consent or authority prior to obtaining the Grant. It is further stated that the respondent has since used the Grant to transfer the suit property into her name. The applicants have since lodged a caution over the land to protect their interest. The applicants have further impugned the letter from the chief of Chepchoina Location in Kitale, Trans-Nzoia County while the suit property is located in Ituru Location, Gatundu, Kiambu County.

6. The application is opposed. The respondent in her replying affidavit deposed that the suit land belongs to her late husband and that there was therefore no need to notify the applicants of the filing of the succession cause. That the land in question is not family land and the family patriarch shared out the land to his children who included the deceased and the applicants. That the applicants sold their share of the family land and the application is therefore misplaced. It is further deposed that the deceased owned land in various places and that therefore the filing of this succession cause in Kitale was proper.

7. The application was canvassed by way of written submissions which I have duly considered.

8. It is not in dispute that the suit land is situate in Kiambu County. The uncontroverted evidence by the respondent is that the deceased was a resident of Kitale and owned land within and outside Kitale. On the issue of administrative jurisdiction, the respondent was at liberty to file this succession cause in Kitale and to obtain the letter from the chief of Chepchoina Location.

9. On whether there was concealment of material facts from the court when the Grant was obtained, it is abundantly clear from paragraph No. 6 of the respondent's replying affidavit that the deceased "*owned land in various places within and without.....*". The question that begs for answers is why the respondent only reflected one property i.e. the suit property and no other property in the petition. This was failure to disclose all the assets of the deceased. The uncontroverted evidence by the applicants is that they live on the suit land. The applicants therefore ought to have been notified of the filing of the petition.

10. Whether the deceased held the suit land in trust for other beneficiaries or not is an issue that cannot be resolved through the application at hand.

11. With the foregoing, I find merit in the application and allow the same with costs in cause.

---

**B. THURANIRA JADEN**

**JUDGE**

**Dated and delivered at Kitale this 10<sup>th</sup> day of march 2016.**

---

**B. THURANIRA JADEN**

**JUDGE**