



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAKURU**  
**SUCCESSION CAUSE NO.170 OF 2013**  
**IN THE MATTER OF THE ESTATE OF RUTH WACHUMO MWAURA – (DECEASED)**  
**MICHAEL MUTURI NJOROGE.....APPLICANT**  
**VERSUS**  
**DANIEL KAMAU NJOROGE.....RESPONDENT**  
**RULING**

This ruling is in respect of the application dated 16/2/2016 and presented to court on the same day by Michael Muturi Njoroge (hereinafter the applicant). The same is premised under **Section 47 and 76** of the **Law of Succession Act (Cap 160 Law of Kenya)** and **Rules 44(1), 49 and 73** of the **Probate and Administration rules**.

The prayers now subject to this ruling are:

1. That the honourable court do declare that a portion containing by measurement 0.39 hectares or thereabouts from all that parcel of land known as DUNDORI/MUGWATHI BLOCK 1/1436 does not form part of the free properties forming part of the estate of the deceased herein.
2. That the honourable court be pleased to rectify the grant herein by reviewing the shares bequeathed to the applicant from 23.236meter X 20 metres to.... plus a portion measuring 13.6 metres X 10 metres from all that parcel of land known as DUNDORI/MUGWATHI BLOCK 1/1436.
3. That the letters of administration issued to the respondents in this cause be revoked and/or annulled.
4. That the costs of this application be provided for.

The application is premised on nine (9) grounds as seen on the face thereof and a supporting affidavit by the applicant.

The gist of the grounds and the affidavit is that a grant was issued to the Respondent in respect of the Estate of Ruth Wachumo Mwaura on the 25th June, 2013. The said grant was confirmed on 29th October, 2015 and a certificate issued.

The only asset being Dundori/Mugwathi Block 1/1436 was distributed equally among all the beneficiaries

at the time of confirmation of the grant.

It is the applicant's case that 13.16 meters X 100 metres or thereabout from all that parcel of land known as NDUNDORI/MUGATHI BLOCK 1/1436 does not form part of the free properties forming part of the estate.

It is urged that the deceased had bequeathed the said portion to the applicant and signed transfer form to that effect during her lifetime although the transfer process was not effected prior to her death. Annexed to the affidavit in support are copies of land control board consent forms and duly executed transfer forms.

The matter was adjudicated before Chief, Ndundori location after the Respondent and other siblings objected to it and the Chief found in favour of the applicant. A resolution is annexed.

The matter was adjudicated upon at the Bahati Land Disputes Tribunal which found in favour of the applicant. The said award was adopted as judgment and decree of the court in Nakuru CMCC No.26 of 2011. A copy of decree is annexed.

The applicant further depones that the proceedings to obtain the grant was tainted with fraud and forgery of his signature. A copy of a report to the C.I.D. is annexed. The administrator is accused of transferring the entire parcel of land to himself to the exclusion of other beneficiaries. A copy of certificate of official search is annexed.

The application is opposed and Daniel Kamau Njoroge (hereinafter the Respondent) has sworn a replying affidavit in which he denies *inter alia* that the deceased had bequeathed any portion of land to the Applicant and that there was fraud in the obtaining of the grant herein. He adds that the land was transferred to himself as per procedure so that he could then further execute all transfer documents and transfer to the beneficiaries. He annexes a copy of a letter of consent and sketch to show that he completed survey work. He states that the applicant has a long standing dispute with the deceased over a claim of kshs.50,000/= he made against the deceased, their grandmother for untold reasons. Indeed the Nakuru Chief Magistrate's land Dispute No.26 of 2011 does not indicate that the applicant is entitled to the share he is demanding.

Mwaura Njoroge has sworn an affidavit on his own behalf and on behalf of Mwangi Njoroge and Daniel Gitau Njoroge (the other beneficiaries) in which he corroborated the averments in the Replying Affidavit by the Respondent.

Patrick Thiong'o has sworn an affidavit in which he states he is a neighbour to the Applicant and Respondent and he knows them well. He states he was aware of the dispute between the applicant and the deceased over Kshs.50,000/= which the applicant claimed was owed to him by the deceased. He states that at no time did the deceased bequeath the applicant a portion of land as claimed. The applicant is accused of being a nuisance to his siblings and the community as large. Patrick Kaguru Kariuki, a neighbour has sworn an affidavit which affirms the contents of the affidavit of Patrick Thiong'o.

Joseph Waweru Gatuma, the area Assistant Chief has sworn an affidavit stating that the land under reference is within his jurisdiction. He known the family of the applicant and the Respondent. They are beneficiaries of the deceased. He is the one who issued a letter to facilitate application for letters of administration. He adds that it is the applicant who later approached him requesting that his other brothers be summoned for the purposes of signing a consent to the confirmation of grant. He summoned all of them and witnessed them append their signatures on the consent. The Assistant Chief states that the applicant has been a nuisance to his brothers and the area community. He urges that the applicant should not be believed or trusted in all his allegations as it is an afterthought.

At the hearing, no submissions were made and the court was left to determine the matter based on the material before it.

I have had occasion to consider the application, the grounds in support and affidavit annexed. I have considered the replying affidavit and the four (4) other affidavits filed.

Of determination are the following issues:

1. Whether the deceased bequeathed a portion of 13.6 metres X 100 metres from parcel No. Dundori/Mugwathi Block 1/1436 to the applicant during her lifetime.
2. Whether the grant was obtained through fraud and forgery.
3. Should the letters of administration issued to the Respondent be revoked and/or annulled.

On issue No.1, the claim by the applicant is not supported by the evidence he relies on. The decree in Nakuru CMCC NO.26 of 2011 reads:

1. That the Bahati Land Dispute Tribunal Award on land parcel No.NDUNDORI/MUGWATHI/BLOCK 1/1436 be and is hereby READ in open court and ADOPTED as judgment and decree of this court.
2. That Mr. Mwaura Njoroge, Daniel Gitau Njoroge, Mwangi Njoroge, Daniel Kamau Njoroge and Michael Muturi Njoroge are the grandchildren of Ruth Wachumo Mwaura and are the only beneficiaries of her parcel NDUNDORI/MUGWATHI 1/1436.
3. That the five brothers should co-operate and go to court for succession.
4. That after the succession case, the District Land Registrar and District Surveyor to assist the beneficiaries to allocate the five brothers technically to avoid rivalry amongst themselves.
5. That they are Chief to ensure peace prevail among the five brothers.

This is perfectly in line with the finding of the Bahati Land Dispute Tribunal which stated:

**“RULING:**

1. **Mr. Mwaura Njoroge, Daniel Gitau Njoroge, Mwangi Njoroge, Daniel Kamau Njoroge and Michael Muturi Njoroge are the grandchildren of Ruth Wachumo Mwaura and are the only beneficiaries of her parcel NDUNDORI/MUGWATHI 1/1436.**
2. **The five brothers should co-operate and go to court for succession.**
3. **After the succession case, the District Land Registrar and District Surveyor to assist the beneficiaries to allocate the five brothers technically to avoid rivalry amongst themselves.**
4. **They are Chief to ensure peace prevail among the five brothers.**

**Thirty days are allowed for an appeal against any party not satisfied by this ruling.**

**ABITRATORS:**

1. **JOSEPH MAINGI - CHAIRMAN SGD. KABAZI**
2. **EVANSON KAMANDA - MEMBER SGD. SOLAI**
3. **LEARNARD KINUTHIA -MEMBERSGD. BAHATI”**

Nowhere in the ruling and in the decree arising therefrom is there an indication that any portion of land

had been bequeathed to the applicant by the deceased before her death. What is clear even from the affidavits in response to the application is that the Applicant laid a claim against his grandmother, the deceased but at no time was the said claim resolved in his favour going by the tribunals finding.

The letter dated 30th September, 1993 by the chief Dundori Location annexed and marked “*MMNV*” is of no consequence as neither the Chief nor the Assistant Chief was clothed with jurisdiction to determine a land dispute. I find no merit at all in the claim that the deceased bequeathed the applicant a portion of the estate before her death. The evidence of the assistant chief and that of Mwaura Njoroge in his affidavit sworn on his own behalf and on behalf of other beneficiaries, that of Patrick Thiong’o in his affidavit sworn on the 29th February, 2016 and of Patrick Kaguru Kariuki in his affidavit sworn on the 29th February, 2016 remain uncontroverted. My evaluation of the evidence in its entirety leads me to the unhesitating conclusion that the depositions are true and the applicant's assertions cannot stand.

As to whether the grant was obtained through fraud and forgery, I note the evidence available in support thereto is a report of a document examiner done pursuant to a report of an alleged forgery where the administrator herein (the respondent) is a suspect. Notably no evidence of charges being preferred has been availed. The request for the examination of the signatures was made vide an exhibit memo form dated 8th January, 2016. 3 months down the line no charges are preferred. Did the police find the evidence unsustainable?

On the other hand, we have the evidence of the area Assistant Chief, Josephat Waweru Gatuma who states he witnessed the applicant and his brothers append their hands to the consent. This confirms the averment in paragraph 9 of the Replying Affidavit of the Respondent. Indeed the Respondent confirms that no charges have been preferred against him.

Tellingly, one finds no reason for the Respondent to forge the applicant's signature noting that the proposals made on distribution were an equal share for each of the beneficiaries and as such no prejudice would be visited on the applicant. Whereas it is not within the knowledge of this court how far the investigations have gone if at all, the fact of the matter is that having found for a fact that no preferential share or portion of the estate had been bequeathed to the Applicant and having regard to the Law applicable, the end result would remain that each of the brothers would get an equal share. Which leads me to the final issue of whether the grant herein should be revoked and/or annulled.

From the foregoing, there exists no basis at all for the revocation and/or annulment of the grant. The applicant has failed to meet the threshold for revocation of grants in terms of **Section 76** of the **Law of Succession Act (Cap 160 L.O.K.)**

With the result that the application herein is dismissed. Each party to bear its own costs.

The administrator to comply with the provisions of **Section 83(g)** of the **Law of Succession Act** and complete the administration of the estate within six (6) months hereof and to produce to court a full and accurate account of the completed administration.

This matter shall be mentioned for that purpose.

**Dated, Signed and Delivered at Nakuru this 14th April, 2016.**

**A. K. NDUNG'U**

**JUDGE**