



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYERI

SUCCESSION CAUSE NO. 324 OF 2004

IN THE MATTER OF THE ESTATE OF KARUGU NGURU-DECEASED

JOHN MWANGI NDIRANGU.....PETITIONER

VS.

MURAGE KARUGU NGURU.....PROTESTOR

JUDGEMENT

Karugu Nguru (herein after referred to as the deceased) is said to have died intestate in or about 1935.

On 5th day of July 2004, a one **Paul Ndirangu Karugu**, a son to the deceased petitioned for letters of administration intestate to the deceased's estate. He died while these proceedings were pending as stated below and the petitioner herein, his son applied for substitution.

The petition filed in court by the said **Paul Ndirangu Karugu**-deceased named two persons surviving the deceased, namely; the said **Paul Ndirangu Karugu** and **Murage Karugu Nguru** the protestor herein. The only property listed constituting the assets of the deceased is title number **Muhito/Ruithanji/343**.

On 3rd September 2004, **John Mwangi Ndirangu** the petitioner herein filed an objection to the making of the grant and a petition by way of cross-petition stating that the deceased was survived by two sons, namely the original petitioner that is his father a one **Paul Ndirangu Karugu**-deceased, the protestor herein **Murage Karugu Nguru** and himself as a grandson to the deceased. In the said objection to the petition filed by his own father, he claimed that his father was aged and was being misled by the protestor herein. The said objection was heard and dismissed by the Hon. Justice Kasango on 11th December 2007.

However, the said **Paul Ndirangu Karugu** died on 8th December 2011 and his son the petitioner herein (who had filed the objection that was dismissed) applied to be substituted in place of his father as the administrator of the deceaseds' estate. The said substitution was done without the knowledge, consent or participation of the protestor herein who was the only surviving son of the deceased. On 13th March 2015 the petitioner applied for the grant to be confirmed and proposed that the above parcel of land be transferred to him to own wholly.

It is important to point out that grounds advanced by the petitioner who had filed the said objection against his father were that he feared that his father would sell the portion due to him and Justice Kasango in a well considered judgement found no basis in the said objection and dismissed it. As fate would have it, the petitioners father died and as stated above the petitioner applied to be substituted in place of his deceased father. Thus, this dispute now involves the petitioner, a grandson to the deceased and the

protestor, the only surviving son to the deceased.

On 27th July 2016 the protestor filed an affidavit of protest in which he averred *inter alia* that he is a son to the deceased hence he ranks higher in priority over the applicant, that he was not aware of the orders of substitution made on 5th December 2013 which were made without his knowledge. He opposed the proposed mode of distribution and insisted that the estate should be shared equally between himself and the estate of his late brother **Paul Ndirangu Karugu**. He insisted that no consent was sought or obtained from him as the law requires.

At the hearing of the protest, the protestor who looked frail testified that he was suffering from throat cancer. He testified that the deceased was his father and that the deceased had two sons, namely **Paul Ndirangu Karugu**-deceased (father to the petitioner) and himself. He insisted that the land was subdivided by clan elders into two portions, one for himself and the other one for his brother. At that point in time his brother was still alive. He also testified that no one lives on the land and that the same is rented by the petitioner.

Upon cross-examination by counsel for the petitioner, the protestor denied that the deceased owned two parcels of land and that one was registered in his name to hold in trust for the deceased. He insisted that the land alluded to was given to him as a gift by a one Wangui Karugu who transferred it to him. He denied that the portion transferred to him ever belonged to the deceased. He insisted that the deceased had two wives, namely, Ngina and Wangui and each one was settled on her parcel of land.

The petitioners evidence was that the deceased was his grandfather and that the protestor is his uncle. He testified that the deceased had two sons, namely, his father **Paul Mwangi Ndirangu**-deceased and the protestor in this case. He testified that the deceased had two parcels of land, namely numbers **Muhito/Ruthanji/362** and **Muhito/Ruthanji/343**. He produced the green cards for the two parcels. He insisted that parcel number **362** belonged to the deceased but at the time of land registration a person was not allowed to have two parcels of land registered in his name, hence it was registered in the name of the protestor to hold in trust for the deceased. He proposed the protestor retains the said parcel of land and that he himself retains **Muhito/Ruthanji/343**.

I have considered the evidence tendered by the parties and submissions filed by both parties. As mentioned earlier, this petition was commenced by the petitioners father who was a brother to the protestor. In the papers filed in court, the said **Paul Ndirangu Karugu** correctly named himself and the protestor as the sole beneficiaries to the deceased's estate. More important to note is the fact that the said **Paul Ndirangu Karugu** only listed one property as constituting the deceased's estate, namely **Muhiti/Ruthanji/343**. He did not include any other property. He was a son to the deceased and a brother to the protestor and who was fully aware of what constituted the deceased' estate.

The petitioner who is a grandson to the deceased filed the objection referred to above. His ground of objection was that his father wanted to sell his portion. At that point in time he never in his objection mentioned that the deceased had any other parcel of land and in particular he never mentioned the land registered in the name of the protestor who is his uncle. To me, this crucial information could not have escaped the attention of his father who obviously knew more than the petitioner particularly what constituted the deceased's estate. My view is that that the allegation that the deceased had two parcels of land and that one was registered in the name of the protestor was not supported by tangible evidence. He did not tell the court how he acquired the said information. To me, this was an afterthought aimed at depriving the protestor his rightful share of his father's estate. I carefully watched the demeanour of the petitioner in court as he gave evidence, and I found his evidence to be totally untruthful.

The evidence adduced by the petitioner did not demonstrate that either the deceased in this case or the petitioners' father or the petitioner himself ever occupied, used or held possession of the land registered in the name of the protestor. There is nothing to show that either the deceased in this case or any other person claiming through him ever raised a claim to the protestors land during their lifetime. There is absolutely nothing to show that the protestor was registered as a proprietor of the said land to hold in trust for any other person. The position advanced by the petitioner that during the land adjudication Africans

were not allowed to be registered as proprietors of more than one parcel of land was in a view a general statement which was not proved to the required standard or shown to apply to the present case.

In any event even if I were to accept the said general statement as true (which I can't), the deceased in this case died in 1935. Land adjudication and registration took place in 1959 or thereabouts. There is no way the deceased could raise from the grave to create the alleged trust during the registration which took place many years after he died. The petitioners father never talked about it. The petitioner was not present when the alleged trust was made nor did he say who were present. The petitioners allegation that the protestor was registered to hold a parcel of land that belonged to his father is therefore not backed by evidence at all. I find the petitioners evidence to be overwhelmingly incredible.

The said land is registered under the now repealed *Registered Land Act*.^[1] The said act grants the protestor absolute and indefeasible title to the said land. It is a first registration. Sections 28 and 30 of the said act are very clear.

It has not been shown that the protestors title to the said land can be defeated by any overriding interests as provided under the clear provisions of the Registered Act (Repealed). I find that the protestor is the lawful absolute registered proprietor of title number **Muhito/Ruthanji/362** and that no evidence was adduced at all to show that the said land was part of the deceased's estate or that the title was held in trust as alleged.

I find that the protestors protest has merits and I allow it. Accordingly I allow the protestors protest and enter judgement as follows:-

a. ***That*** a grant of letters of administration intestate to the deceased's estate be and is hereby issued jointly to **John Mwangi Ndirangu and Murage Karugu Nguru** and that the same be and is hereby confirmed.

b. ***That*** the said **John Mwangi Ndirangu and Murage Karugu Nguru** are entitled to equal portions out of land parcel **Muhito/Ruthanji/343**.

c. ***That*** the said land number **Muhito/Ruthanji/343** be divided into **two equal** portions as aforesaid among **John Mwangi Ndirangu and Murage Karugu Nguru**.

d. ***That*** the said **John Mwangi Ndirangu and Murage Karugu** are directed to **within 45 days** from the date of this judgement to execute such documents as may be necessary to facilitate the sub-division and transfer of their respective portions to themselves.

e. ***That*** in the event of one of them failing to execute the said documents among them mutation and transfers forms, then the Registrar of this court is directed to at the request of either party to execute such documents as may be necessary to effect the said subdivision and transfer.

f. ***That*** in the event of one of them failing to avail the original title or such documents as are required to facilitate sub-division and transfer of the said parcels of land as herein above ordered, then the Land Registrar, Nyeri County be and is hereby ordered to dispense with such unavailable documents among them the original title, copies of national identity cards, photographs and income tax pin.

g. The petitioner shall pay the costs of this cause to the protestor

Right of appeal 30 days

Signed, Delivered and Dated at Nyeri this **6th** day **October** of 2016

John M. Mativo

Judge

[\[1\]](#) Cap 300, Laws of Kenya (Repealed)