



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI**  
**SUCCESSION CAUSE 2578 OF 2008**  
**(SUCCESSION CAUSE 73 OF 2007- LIMURU LAW COURTS)**  
**IN THE MATTER OF THE ESTATE OF JAMES MUNGAI GITHENGU (DECEASED)**  
**MONICAH WANJIRU MUNGAI.....APPLICANT**  
**VERSUS**  
**SAMUEL THUNGU MUNGAI**  
**GADI KARANJA MUNGAI.....RESPONDENTS**  
**RULING**

The deceased James Mungai Githengu died on 17<sup>th</sup> February, 1969. In **Succession Cause 73 of 2007 in Limuru Court**, the grant was issued to Samuel Thungu Mungai and Gedi Karanja Mungai on 14<sup>th</sup> November, 2007 and confirmed on 29<sup>th</sup> July, 2008.

The Applicant Monicah Wanjiru Mungai the daughter and one of the beneficiaries of the deceased's estate stated the grant should be revoked or annulled as per the summons filed on 10<sup>th</sup> November, 2008. This is because the grant was obtained fraudulently by making a false statement or by concealment of material facts from the Court.

The matter proceeded for hearing as *ex parte* on 19<sup>th</sup> January, 2015. The Respondents were served with the hearing notice as evidenced by the affidavit of service filed on 15<sup>th</sup> January, 2015. The Respondents did not appear in Court or provide information for the Court to consider.

The Applicant told the Court, she learnt of the confirmation of grant proceedings and rushed to Limuru Law Courts. She later filed an application to set aside, revoke and annul the grant after she was granted 90 days to file the formal application. She filed the protest application and the annexed supporting affidavit filed on 6<sup>th</sup> August, 2008 at paragraph 9 listed the beneficiaries of the deceased's estate who comprised of 24 members of the family. She stated the material facts left out are that other beneficiaries were not disclosed and their consents were not obtained at the time of obtaining the grants. Of the girls in the family; she is unmarried; she lived and still lives on the ancestral land yet the administrators did not consult upon or obtain consents in distribution of the following properties;

ii. LARI/MAGINA/T.35

iii. LARI/MAGINA/T.310

The Respondents Administrators filed a Replying Affidavit on 6<sup>th</sup> July, 2009 and they deposed that the Applicant is their sister, she was married and returned home in 2002 when their mother died. They deposed they did not conceal any facts all members of the family knew they lodged the petition in Court for grant of letters of administration of the deceased's estate after 39 years. The mode of distribution of the deceased's estate was according to the deceased's wish reduced into writing on 16<sup>th</sup> February, 1969, a day before he died and a copy is attached to the affidavit, the Kikuyu and English versions. The document amounts to a Will under Kikuyu Customary Law.

The said Will was implemented at a family meeting held on 14<sup>th</sup> September, 1976. No member of the family who was to share in the distribution of the estate of the deceased was left out. The Will is attached as Exhibit 'A' and the Family Meeting Minutes Exhibit 'B' of the affidavit filed on 6<sup>th</sup> July, 2009.

The Applicant Monicah Wangui Mungai filed a further affidavit on 10<sup>th</sup> November, 2009 and deposed that the deceased had 2 wives;

a. Sophia Kabuu Mungai and

b. Monicah Nyakarima Mungai who was alive then.

The 1<sup>st</sup> wife had 8 children as stipulated in paragraph 5 of the affidavit and the 2<sup>nd</sup> wife 3 children as indicated in paragraph 5 of the Objector filed on 6<sup>th</sup> August, 2008. The administrator did not have priority in obtaining the grant of letters of administration of the deceased's estate over the surviving widow Monicah Nyakarima Mungai. In obtaining the grant they did not obtain written consents of the beneficiaries. She is unmarried and has remained there on the said land all this time. The document annexed as Exhibit 'A' is not a Will.

The Court has to determine the issue of the confirmed grant of 29<sup>th</sup> July, 2008 if it is valid and whether it is fair and equitable to all beneficiaries of the estate. The Court has considered the oral evidence and pleadings filed by both parties and found the following facts;

1. The Court record of **Limuru Law Court Case No. 73 of 2007** is attached to the Court file. Of interest the petition contains the names of 5 of the whole family of the deceased.

2. The Chief's letter of 13<sup>th</sup> August, 2005 indicates;

a. "The purpose of this letter is to kindly request you to assist Mr. Samuel Thungu Mungai ID 5250610 and Mr. Gadi Karanja Mungai ID 0472929 being the administrators of the deceased estate to file Succession Cause on behalf of the entire estate heirs."

b. "Also facilitate in filing Mrs Sophia Kabuu Mungai Succession Cause that is to be inherited by her only children not including other co-wife children."

3. The Administrators were to file the Succession Cause to obtain a grant for all beneficiaries of the deceased's estate that is children of both houses of 1<sup>st</sup> and 2<sup>nd</sup> wives of the deceased. The estate of the other wife would relate to property that she got on her own only if at all.

4. The Court finds that the Chief's letter content was not correct, the said Sophia Kabuu Mungai was the wife to the deceased and her children are to benefit from the their father's estate too. Secondly, the Chief did not outline the names of the family of the deceased save to state he had 2 wives and a vast estate.

5. The Court finds that the Applicant's claim that all beneficiaries of the deceased were not disclosed to be true and valid.

6. The written consents were not obtained and therefore the confirmed grant of 29<sup>th</sup> July, 2008 was not valid and regular as the as the material information of beneficiaries and distribution of the estate were concealed from the Court.

7. The Will attached dated 2<sup>nd</sup> March, 2015 is not a Will within the meaning of **Section 11 of the Law of Succession Act Cap 160**. If it was a Will then the administrators ought to have disclosed it at the time they petitioned for grant of letters of administration intestate and instead obtained grant of probate. The content of the alleged will does not disclose deceased's apportionment of his property to beneficiaries. In fact it shows land was to be divided by the Court.

8. If there is a valid Will then there was no need for the family meeting of 14<sup>th</sup> September, 1976 for the family to discuss and agree on the mode of distribution of the deceased's estate. The Family Meeting Minutes annexed as Exhibit 'B' shows "Family Elders Divide Property of James Mungai Githengu," the deceased. The Elders had no such powers in the absence of all family members and their consents. The deceased died in 1969 and family met on distribution of the estate 7 years later in 1976 and a petition was filed in Court 2008. The length of time , the conflicting versions as to mode of distribution and without consents of all beneficiaries render the grant issued by the Court invalid as they are vitiated by non-disclosure of material facts to the Court.

The Court therefore orders;

1. The grant of letters of administration of 14<sup>th</sup> November, 2007 and confirmed grant of 29<sup>th</sup> July, 2008 are hereby revoked and annulled.
2. The list of beneficiaries of both houses, list of assets and liabilities and proposed mode of distribution be filed in Court by the administrators within 30 days
3. In default of agreement between the beneficiaries, each party to file proposals of the mode of distribution for the Court to determine.
4. Being a family matter no orders as to costs

**READ AND SIGNED AT NAIROBI ON THIS 4<sup>TH</sup> DAY OF MARCH, 2015**

*In the presence of;*

*Mrs Ngetho holding brief for Mr. Mwangi Chege for the applicants*

**M. MUIGAI**

**JUDGE**