



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**MILIMANI LAW COURTS**  
**FAMILY DIVISION**  
**SUCCESSION CAUSE NO. 2775 OF 2006**  
**IN THE MATTER OF THE ESTATE OF**  
**JOSEPH WILLIS ONGUTI (DECEASED)**

**MARGARET CHELANGAT ONGUTI.....1<sup>ST</sup> APPLICANT**

**WILLIAM ONGUTI.....2<sup>ND</sup> APPLICANT**

**VERSUS**

**TERESIA KERUBO ONGUTI.....RESPONDENT**

**RULING**

1. The deceased JOSEPH WILLIS ONGUTI died intestate on 15<sup>th</sup> July 2006. On 15<sup>th</sup> November 2006 his widow TERESIA KERUBO ONGUTI (the respondent) applied to be granted letters of administration in respect of the estate. She stated that the deceased had left her with five children, namely LUCY MORAA ONAMI, PETER OYARO ONGUTI, ANNE NYAMBOKE ONGUTI, MARK ONGUTI AND MARGARET KEMUNTO ONGUTI. A grant was issued to her on 1<sup>st</sup> December 2006 and confirmed on 21<sup>st</sup> July 2009. The properties of f the estate were NAIROBI/BLOCK 103/18, NAIROBI/BLOCK 23/455, KISII-WEST KITUTU/BOGEKA/648, 1000 shares in Kenya Airways and money in Barclays Bank A/C [*particulars withheld*].
2. On 13<sup>th</sup> August 2010, MARGARET CHELANGAT ONGUTI and WILLIAM ONGUTI (the applicants) went to the same registry and in a different file (the present file) and filed a separate Cause in respect of the same deceased. They sought to be granted letters of administration intestate. The 1<sup>st</sup> applicant (MARGARET) was saying that she was the deceased's widow and that they had the following children:- WILLIAM ONGUTI (2<sup>nd</sup> applicant) KIREKI ONGUTI, ANDREW MZEE ONGUTI and MAURINE NYANJOKA ONGUTI. On 31<sup>st</sup> March 2011 the grant was issued, and on 25<sup>th</sup> July 2011 the same was confirmed. The properties in the estate were indicated as Buruburu Phase 2 Block 213/6, South C Plot No. 103/18 House No. 17, money at Barclays Bank and Shares at Kenya Airways.

3. On 8<sup>th</sup> June 2012 the applicants applied under **sections 74 and 75 of the Law of Succession Act (Cap 160)** to have the grant issued to them amended to include the respondent and her children. She sought that there be an amended sharing so that Buruburu House Phase 2/Block 213/6, South C Plot No. 103/18 House No. 17, Barclays Bank money and the Kenya Airways shares all go to her house; that South B Plains View House No. 455 goes to the respondent's house; and each house gets half of the 5 acres in Kisii West Kitutu/Bugeka/648. Her case was that she had inadvertently left out the respondent and her children when filing the Cause. She also had inadvertently not included the 5 acres and the house at Plains View. In the affidavit sworn to support the application she acknowledged that the respondent was the wife of the deceased with whom they had the named children. She stated that the respondent was the deceased's second wife.
4. The respondent swore an affidavit in response in which she stated that she was married to the deceased under the **African Christian Marriage and Divorce Act (Cap 151)**, and that was a monogamous marriage which could not allow the deceased to contract any other form of marriage. She denied that the 1<sup>st</sup> applicant was the wife of the deceased. She also denied that the children of the 1<sup>st</sup> applicant were children or dependants of the deceased.
5. Once the respondent got a grant in respect of the deceased's estate no other Cause could be filed by the applicants, or any other person, over the same estate. What the applicants purported to do was a nullity.
6. Secondly, the applicants knew that the deceased was married to the respondent and that they had children. It was fraudulent, and not inadvertence, to file the Cause without reference to them. This concealment of material facts cannot help the situation.
7. These are the reasons why I annul all the proceedings in **High Court Succession Cause No. 1626 of 2010** at Nairobi in respect of the deceased JOSEPH WILLIS ONGUTI, and order the cancellation of the Certificates of Grant and Confirmation that were therein issued to the applicants.
8. In the wider interests of justice, I allow the applicants 30 days to bring their claim to the estate in **High Court Succession Cause No. 2775 of 2006** at Nairobi. It is in such an application that the court shall receive evidence to determine what interest, if any, that the 1<sup>st</sup> applicant and her children have in the estate.
9. In the meantime, the application dated 23<sup>rd</sup> April 2012 and filed on 8<sup>th</sup> June 2012 by the applicants is dismissed with costs.

**DATED and DELIVERED at NAIROBI this 6<sup>th</sup> October 2014.**

**A.O. MUCHELULE**

**JUDGE**