



**REPUBLIC OF KENYA**

**IN THE HIGH COURT**

**AT NYERI**

**Succession Cause 601 of 2006**

**IN THE MATTER OF THE ESTATE OF JOHN MUTURI GATEMI (DECEASED)**

**AND**

**MARY MUTHONI MWANGI ..... APPLICANT**

**VS**

**KAMATU GATEMI ..... RESPONDENT**

**AND**

**CHARLES MAINA MWANGI & OTHERS ..... INTERESTED PARTIES**

**RULING**

This is an application dated 22<sup>nd</sup> July 2011 under section 76(b) of CAP 160 rule 44(1) of the Probate and Administration Rules for an order that the grant of letters of administration issued on 9<sup>th</sup> February 2011 to MARY MUTHONI MWANGI and KAMATU GATEMI on 9<sup>th</sup> February 2011 be revoked on the ground that the petitioners herein conceded material information to this cause.

It should be noted at this stage of the ruling that MARY MUTHONI MWANGI is the mother of the applicants herein and KIMATU GATEMI their uncle.

The only fact as per the affidavit of CHARLES MAINA MWANGI on behalf of the interested parties was that the petitioners took out letters of administration in respect of the estate herein and had it confirmed without revealing to court that they rank in equal priority with KAMATU GATEMI. They further alleged that their mother was never advised that her interest in the estate if any was not priority over theirs.

It should also be noted that their mother having been appointed co administrator following her objection on 21<sup>st</sup> February 2011 filed an application for an order that the grant herein be revoked or annulled on the ground that she is entitled to the estate of the late John Muturi Gatemi as a beneficiary and administrator of his estate which application is still pending before court.

It should also be noted that in her objection filed on 27<sup>th</sup> July 2007 MARY MWANGI stated that the

entire parcel NYERI/WARAZA/31 belong wholly to her late husband JOHN MWANGI GATEMI alias MWANGI GATEMI: and that the petitioner and the deceased whose estate is the subject matter of proceedings have no right whatsoever over it.

The interested parties who are the children of MARY MUTHONI MWANGI are therefore before this court claiming an interest in the land which their mother had indicated did not belong to the deceased.

I have looked at the submissions filed by the respective parties and the applicable law. It is submitted by the applicants and conceded by the respondent that as per the provisions of section 39 of Cap 160 when the intestate leave no surviving spouse or children then the net intestate should devolve upon the kindred in the following orders father or if dead mother or if dead brothers and sisters and any child or children of the deceased brothers and sisters in equal shares and it is on this basis that the applicants are claiming that the land should be distributed equally between them and the respondent.

The respondent in his submission has submitted that the applicants mother was cited and took part in the proceeding herein as outlined above and that if the appellant felt that their mother was not representing them well they should have filed objection from 29<sup>th</sup> May 2007. It has been submitted that the application herein is an abuse of the process of law and mischievous.

Having looked at the history of this matter I am in agreement with the submissions by the respondent that the proceedings before this court is an abuse of the court process and that the applicants have not come to this court with clean hands. I have noted that in Nyeri High court Civil Case No. 103 of 1990 the applicant's father was awarded 12 acres and the respondent and the deceased whose estate is in dispute 2 acres and 7 acres respectively which their mother has refused to accept and therefore leading to the litigation herein.

I have had a look at the letter from the Chief dated 11<sup>th</sup> October 2001 in support of the respondent application for grant and the further affidavit of KAMATU GATEMI sworn on 5<sup>th</sup> January 2012 which has not been controverted and specifically the contention that the applicants together with their mother chased the respondent and the deceased away from the said land and never allowed the deceased to be buried on the said land. This court can not allow them to benefit from the estate of the deceased merely because the law says that they are entitled. To my mind they have failed to show that they are in equity entitled to a share of this 7 acres. I have also taken into account the fact that the applicants only filed this application upon being advised that their mother's application is incompetent and unlikely to be allowed by court.

I therefore find no merit in the application herein and dismiss the same with costs. To my mind this confirms that the application is indeed an abuse of the court.

**Dated and delivered this 16<sup>th</sup> day of July 2012.**

**J. WAKIAGA**

**JUDGE**

In open court.

Mr Kioni for the applicant

Mr. Wachira for the Respondent

**J. WAKIAGA**

**JUDGE**