



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIVASHA**

**SUCCESSION CAUSE NO. 75 OF 2014**

**IN THE MATTER OF THE ESTATE OF JOSEPH MBUGUA THUKU (DECEASED)**

MARY WANGARI KARITU.....1<sup>ST</sup> PETITIONER

SAMUEL THUKU MBUGUA.....2<sup>ND</sup> PETITIONER

**-VERSUS-**

MARY WANGUI KING'ORA.....1<sup>ST</sup> OBJECTOR

MARGARET WAMBUI GITHAIGA.....2<sup>ND</sup> OBJECTOR

**R U L I N G**

1. The Objectors herein filed their objection to the Petition in respect of the estate of **Joseph Mbugua Thuku**.
2. From the various affidavits filed, it is evident that the Objectors are sisters to the deceased herein while the Petitioners are the wife and son respectively of the deceased herein. The properties listed in the petition as part of the estate of the deceased are **NAIVASHA/MWICHIRINGIRI BLOCK 1/149** and **NAIVASHA/MWICHIRINGIRI BLOCK 1/437** registered in the name of the deceased in 2006, pursuant to the confirmed grant issued by the lower court in Succession Cause Number 77 of 2005. The deceased therein was **Gladys Wairimu Thuku** mother to the Objectors and deceased herein. The lower court file cannot be traced.
3. However, according to the Objectors annexures '**MWA 1**' attached to the affidavit to support the Objection, the purported assets listed in the present petition were the same assets owned by their mother **Gladys Wairimu Thuku** since 1991. The Objectors contend that their deceased brother herein surreptitiously filed a Succession Cause in which he presented himself as the sole beneficiary of the estate of **Gladys Wairimu Thuku**. The Confirmed Grants exhibited in the affidavit of the Petitioners filed on 7<sup>th</sup> July, 2015 are evidence of the said Succession Cause.
4. The Petitioners assert that the Objectors were always aware of the proceedings in Naivasha Succession Cause No. 77 of 2005 but did not object, and waited until the deceased herein

passed on. The initial Succession file, as I indicated, cannot be found. There is no evidence that the Objectors' consent was sought to the Succession Cause in question or that they were aware of the same. What I hear more emphatically asserted by the Petitioners is that, the Objectors being married women had no standing as beneficiaries of the estate of their deceased mother, through whom **Joseph Mbugua Thuku** inherited the assets listed herein.

5. The above argument is clearly fallacious in light of the provisions of Section 38 of the Law of Succession Act. Only son or not, the deceased stood on an equal footing with the Objectors as far as the estate of their deceased mother was concerned. The impugned grant issued to him was seemingly obtained through suppression of material facts as regards the existence other beneficiaries (the Objectors), and without their knowledge and consent.
6. Despite the missing lower court file, a copy of the impugned grant issued has been tendered herein by the Petitioners to bolster their claim to the estate of the deceased herein. Rather than revoke that grant, I think that the neater way to resolve this matter is to order that on the basis of the petition and cross-petition on record, a grant in the joint names of the two Petitioners and the two Objectors does issue.
7. At the appropriate time, the parties will file summons to confirm the grant along with proposals by way of affidavits concerning the distribution of the estate to enable the court determine what each beneficiary is entitled to.
8. If the parties are unable to apply jointly for the Confirmation of the Grant after six months, the matter will be placed before the Judge for further orders and directions. For this purpose a mention is hereby set for 22<sup>nd</sup> June, 2016.

**Delivered and signed at Naivasha this 2<sup>nd</sup> day of November, 2015**

In the presence of:-

The Petitioners : Mr. Mayaka for them

The Objectors : In person

Court Clerk : Stephen

**C. W. MEOLI**

**JUDGE**



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