



REPUBLIC OF KENYA

IN THE HIGH COURT AT NAIROBI

(FAMILY DIVISION)

SUCCESSION CAUSE NO 1853 'A' OF 2009

IN THE MATTER OF THE ESTATE OF DANIEL NJUHIGA MUTURI

(DECEASED)

ROSE NYAMBURA NJUHIGA..... APPLICANT

VERSUS

ELIZABETH MARY RUGURU MURIU.....1ST RESPONDENT

JOHN MWATHA MURIU.....2ND RESPONDENT

RULING

1. Before me are two applications by the Applicant. The 1st is dated 15th October, 2015 seeking for annulment of the grant issued to the Petitioners/Respondents on the 13th of September 2010 on grounds that the same was obtained fraudulently. The 2nd is dated 9th November 2017 seeking for injunctive orders against the Petitioners/Respondents in order to preserve properties that belong to the estate in particular plot Nos. **134** and **135** (sub division of L.R. No. **5805/2**) **Kamiti Corner Estate** pending hearing and determination of this matter on grounds that Applicant solely purchased the two plots and financed the building of the matrimonial home on plot No. 134 and that the 1st Respondent has threatened to dispose of the said assets.

2. The 1st application was opposed by the affidavits of **Elizabeth Mary Ruguru Muriu** dated 5th April 2016 and that of **John Mwatha Muriu** dated 29th March 2016 wherein both deny the allegations of fraud, admit that the Applicant was married to the deceased and state that she may have been divorced. The 2nd application was opposed vide the replying affidavit of Elizabeth Mary Ruguru Muriu dated 2nd February 2018 stating that she sued the applicant in the environmental court as the applicant had invaded the suit properties, she denied that the applicant solely purchased the properties, and further denied allegations of intermeddling.

3. The applicant filed a rejoinder dated 5th April 2018 and stating that she is not aware of the case against her in the environmental court. She reiterated the claim of having purchased the properties subject matter.

4. From the proceedings and annexures both the Applicant and 1st Respondent had a wife/husband relationship with the deceased, a fact well known to both sides. The applicant contracted a civil marriage with the deceased and was never formally divorced. The 1st Respondent on the other hand cohabited with the deceased as a wife. The 2nd Respondent is a brother to the 1st Respondent.

5. The 1st Respondent admits that she left out the name of the Applicant. However, she does not explain why the introductory letter was issued by a chief of a different location other than a chief of the deceased home or where he stayed before his demise.

6. Clearly evidence before court is that the grant issued on 13th September 2010 was so issued and obtained with crucial information having been concealed by the Respondents. The deceased had another family and the Respondents had this information yet the information was kept away from the court. Secondly the letter from the chief was fraught with falsehood a fact within the knowledge of the Respondents.

7. Consequently, the grant issued to the Petitioners/Respondents cannot be sustained and must and is hereby revoked.

8. In its place a grant will issue in the joint names of **Rose Nyambura Njuhiga and Elizabeth Mary Ruguru Muriu.**

9. Pending confirmation and distribution herein an injunction will issue restraining the two new administrators their agents, servants or any one acting on their behalf and/or any of the beneficiaries of the estate from intermeddling with the estate pending further orders of the court.

10. Costs in the cause.

Dated and Delivered in Nairobi on this 7th day of February, 2019

ALI-ARONI

JUDGE



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