



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT KIAMBU**

**CIVIL APPEAL NO. 107 OF 2018**

**1. ELIZABETH KIRIGO THIANI.....1<sup>ST</sup> APPELLANT**

**2. ESTHER WANJIKU SAITABAO.....2<sup>ND</sup> APPELLANT**

**- VRS -**

**1. The Administrators of the estate of the late MUCHIRI NJUGUNA**

**alias MUCHIRI IROBI (Deceased).....1<sup>ST</sup> RESPONDENT**

**2. JANE WAITHERA NJOROGE.....2<sup>ND</sup> RESPONDENT**

**{Being an appeal against the Ruling of Hon. D. N. Musyoka – PM Kikuyu dated and delivered on the 7<sup>th</sup> day of August 2018 in the original Kikuyu Principal Magistrate’s Court Succession Cause No. 5 of 2012}**

**JUDGEMENT**

These proceedings relate to the estate of Muchiri Njuguna alias Muchiri Irobi who died intestate on 31<sup>st</sup> July 2010 domiciled in Kiambu, Kenya. The grant of letters of administration to the estate were issued to his son David Njuguna Irobi (the Administrator) on 11<sup>th</sup> May 2012 and was subsequently confirmed on 20<sup>th</sup> June 2012. During the administration it transpired that among the assets comprising the estate were four parcels of land to wit, LR Dagoretti/Mutuini/1065, Dagoretti/Mutuini/1066, Dagoretti/Mutuini/1067 and Dagoretti/Mutuini/1068 which the deceased had in his lifetime sold to one David Thiani Karigu. Upon the application of the administrator and acting on information provided by the Chief of Thogoto Location in a letter dated 15<sup>th</sup> November 2011 the trial court confirmed the grant and transmitted land parcels LR Dagoretti/Mutuini/1065 and 1066 to Evanson Karanja Thiani a son of David Thiani Karigu and LR Dagoretti Mutuini/1667 and 1068 to Jane Waithera Njoroge also named in the Chief’s letter.

On 15<sup>th</sup> January 2018 Elizabeth Kirigo Thiani and Esther Wanjiku Saitabao who described themselves as the daughters of David Thiani Karigu, deceased, filed a summons for partial revocation of that part of the grant that had devolved the four parcels of land to Evanson Karanja Thiani, who admittedly is their brother and to Jane Waithera Njoroge. The grounds for their application were that they were daughters of the late David Thiani Karigu and hence his beneficiaries entitled to a share of his estate yet the mode of distribution had excluded them and disinherited them. They described and referred to Jane Waithera Njoroge as a stranger to their father’s estate. They also sought an order to restrain their brother Evanson Karanja Thiani and the said Jane Waithera Njoroge from

transferring, charging, subdividing or otherwise alienating the four parcels of land.

On 16<sup>th</sup> May 2018 Kisilu & Co. Advocates filed a preliminary objection in response to the summons and stated that Elizabeth Kirigo Thiani and Esther Wanjiku Saitabao (now the appellants) did not have *locus standi* to bring the summons in that they had not obtained a grant in respect of their father's estate, that there was no proof they had authority of the other beneficiaries to bring the summons, that the Law of Succession Act did not recognize partial annulment of a grant and lastly that the applicants ought to have sued the entire estate of Muchiri Njuguna (deceased) and all the other persons who had benefitted from that estate so that all could have an opportunity to defend themselves.

After considering submissions from both sides the trial court struck out the summons for revocation. It is that ruling dated 7<sup>th</sup> August 2018 that triggered this appeal. The appeal is premised on grounds that: -

**“1. THE learned trial magistrate erred in law in failing to consider the cardinal principle of Succession law relating to the distribution of the late David Thiani's estate without a confirmed grant as required in law and contrary to Sections 38 and 45 of the Laws of Succession.**

**2. THE learned trial magistrate erred in law and in fact in holding that the appellants who are the daughters of the late David Thiani (deceased), a purchaser of a parcel of land from the late Muchiri Njuguna (deceased) required to have limited letters of grant to the estate of David Thiani (deceased) in order**

**3. THE learned trial magistrate erred in law and in fact in holding that since the appellants did not appear in the chief's letter of the Late Muchiri Njuguna listing the beneficiaries and purchasers in the estate of the late Muchiri Njuguna, they required to prove by way of limited letters of grant that they were the biological children of the late David Thiani.**

**4. THE learned trial magistrate erred in law and in fact in holding that the appellants should sue against the estate of the late Muchiri Njuguna and enjoin the other current registered owners to the estate of David Thiani while the two registered owners were active participants in the revocation proceedings. Evanson Karanja appeared in person and Jane Waithera was represented by the advocate acting for the administrators.**

**5. THE learned trial magistrate erred in law and in fact in failing to consider that the administrators of the estate of Muchiri Njuguna had illegally sub-divided and allocated the parcel of land belonging to the late David Thiani (deceased) without a confirmed grant being issued for the Estate of David Thiani (deceased) thereby disinheriting the beneficiaries of the estate of the late David Thiani (deceased).**

**6. THE learned trial magistrate erred in law and in fact in failing to consider the documentary evidence namely a letter from the local administration which stated that the appellants were biological children of the late David Thiani (deceased) and therefore entitled to inheritance from his estate, while at the same time allowing a stranger, Jane Waithera Njoroje, to inherit a portion of the estate of the deceased.**

**7. THE learned trial magistrate erred in law and in fact in considering and taking into account that the appellants were not listed by the local chief as children/purchaser of the later Muchiri Njuguna (deceased) while in actual fact the appellants were children of the late David Thiani (deceased) who was a purchaser and the estate was entitled the land which is Title Number: Dagoretti Mutuini/1065, Dagoretti Mutuini/1066, Dagoretti Mutuini/1067 and Dagoretti Mutuini/1068 which the administrator bequathered the appellants brother, Evanson Thiani and a stranger, Jane Waithera to the exclusion of the rest of the members of the family of the late David Thiani (deceased).**

**8. THE learned trial Magistrate erred in law in failing to consider the cardinal principle of Succession law in relating to the distribution of the Late David Thiani's estate without a confirmed grant as required in law.”**

Due to the prevailing circumstances the appeal proceeded by way of written submissions. I have carefully considered the rival submissions in light of the law and the proceedings in the trial court. It is instructive that the beneficiaries of the estate of Muchiri Njuguna alias Muchiri Irobi (the deceased in Kikuyu Succession No. 5 of 2012) have not raised any concerns in the manner his estate was distributed. The summons for revocation and this appeal are by persons who claim to be the beneficiaries of the estate of

**David Thiani**, also deceased, who was a creditor of the deceased. In my considered view the issue here is not so much whether the Law of Succession Act envisages partial revocation of a grant but whether the summons for revocation by the two appellants were brought in the appropriate forum. It is my finding that the duty of the administrator of the estate of Muchiri Njuguna alias Muchiri Irobi, provided in **Section 83** of the **Law of Succession Act**, to the estate of David Thiani lapsed upon the identification of the shares due to that estate and the transmission of those assets to the persons who were presented to him and the court as the beneficiaries of that estate. If any dispute arose between the beneficiaries of the estate of David Thiani regarding the manner in which the administrator in the estate of Muchiri Njuguna had distributed that which belonged to their father then that dispute could not be litigated in the cause relating to the estate of Muchiri Njuguna. It was not the right forum for such a dispute. I therefore do agree with the decision of the trial Magistrate and find that in so far as the summons for revocation was made in this cause then it was misconceived and the best way to deal with the same was to strike it out. In the upshot this appeal has no merit and it is dismissed with costs to the respondents. It is so ordered.

**Signed and dated in Nyamira this 16<sup>th</sup> day of December 2020.**

**E. N. MAINA**

**JUDGE**

**Judgement dated and delivered in Kiambu Electronically via Microsoft Teams on this 18<sup>th</sup> day of December 2020.**

**MARY KASANGO**

**JUDGE**



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