



REPUBLIC OF KENYA



KENYA LAW
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In re Estate of Miriam Edwin Mbugua (Deceased) (Succession Cause 84 of 2018) [2023] KEHC 21606 (KLR) (18 August 2023) (Ruling)

Neutral citation: [2023] KEHC 21606 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
SUCCESSION CAUSE 84 OF 2018**

A MSHILA, J

AUGUST 18, 2023

IN THE MATTER OF THE ESTATE OF MIRIAM EDWIN MBUGUA (DECEASED)

BETWEEN

PETER GACHERU OBJECTOR

AND

EUNICE WANJIRU IKERE PETITIONER

RULING

1. Eunice Wanjiku Ikere filed the Petition for grant of letters of administration intestate in respect of the estate of Miriam Edwin Mbugua (deceased) on 3rd October, 2018 who died on 19th December, 2016, in her capacity as a daughter to the deceased.
2. She listed the persons surviving the deceased as Eunice Wanjiku Ikere, Robert Munga Mbugua, Catherine Wacere, Caroline Wambui Mbuguah, Olive Kabura Mbugua, Peter Gacheru Mbugua. The only ascertained asset belonging to the deceased was said to be land parcel No. Kiambaa/Kihara/T.394.
3. On 24th January, 2019, Peter Gacheru Mbugua filed a Notice of Objection to the making of the grant to the estate of the deceased herein on the grounds that:-
 - a. The Petitioner filed the Succession Cause secretly without involving all the beneficiaries of the deceased.
 - b. The objector is the sole owner of Plot No. Kiambaa/Kihara/T.394.
 - c. The Petitioner has threatened to demolish the permanent structures of the Objector.
 - d. The Petitioner has misled Caroline Wambui Mbugua to sign the consent to the application of grant yet the said Caroline Wambui Mbugua has a psychiatric disorder.



4. Subsequently, Peter Gacheru Mbugua filed his Objection to the making of Grant on 15/8/2019 based on the grounds that;
 - a. Peter Gacheru Mbugua, the Objector herein is the sole proprietor of Plot No. Kiambaa/Kihara/ T.394.
 - b. Plot No. Kiambaa/Kihara/T.394 does not belong to the deceased.
 - c. The Petitioner has taken advantage of a person of unsound mind and made her sign the consent to the application for the grant.
5. In his affidavit in support of the Objection, Peter Gacheru Mbugua deposed that he is the sole proprietor of Plot No. Kiambaa/Kihara/T.394 which he purchased and was issued with a land certificate on 14/2/1986. That the Petitioner knowing that Caroline Wambui has a psychiatric disorder caused her to sign the consent as well as Olive Kabura who suffered from a terminal condition. The court was urged to strike out the petition.
6. On 6/2/2020 the Objector filed his answer to the Petition for a Grant as well as his Petition by way of Cross-Application for a Grant. He contended that he was the owner of the suit land herein and not the deceased as alleged by the Petitioner. The Petitioner was also accused of coercing Caroline Wambui and Olive Kabura to sign the consent. In his cross-application for grant he sought for a grant of representation as he is better placed to search for assets and liabilities belonging to the deceased.
7. The Petition was canvassed by way of written submissions as summarized hereunder;

Submissions

8. The Objector submitted that not all beneficiaries were involved when the Petition was filed by the Petitioner. Land Parcel No. Kiambaa/Kihara/T.394 was contended that it did not form part of the deceased's estate as alleged by the Petitioner. Further the Petitioner was accused of having coerced Caroline Wambui to sign the consent whereas she suffers from a mental illness. He sought that a grant of representation be issued to him.
9. The Petitioner did not respond to the objection, nor did she file an answer to the Petition for a grant and the cross-application for a grant. She also failed to file her written submissions.

Issues for Determination

10. Having considered the Petition, the Objection, the answer to the Petition, the Cross-Petition and the Objector's submissions, the only issue arising for determination is whether land parcel no. Kiambaa/Kihara/T.394 forms part of the deceased's estate.

Analysis

11. The Petition herein was filed on 3/10/2018. The only asset ascertained as forming part of the deceased's estate was listed as land parcel No. Kiambaa/Kihara/T.394. The Petitioner attached a Certificate of Official Search dated 21/3/2017, for the said parcel of land where Peter Gacheru Mbugua was on 14/2/1986 named as the proprietor. The consent to the making of a grant of administration intestate was signed by the beneficiaries save for the Objector herein Peter Gacheru Mbugua.
12. On 19/7/2019 the succession cause was published in the Kenya Gazette Notice no. 6666. Subsequently, the Objector herein on 15/8/2019 filed his objection to the making of the grant on the grounds that he was the proprietor of land parcel no. Kiambaa/Kihara/T.394 as such the same does not



form part of the deceased's estate and that Caroline Wambui a person of unsound mind was coerced to sign the consent. He also filed his answer to the petition for a grant and a petition by way of cross-petition for a grant. He averred that the suit land now belongs to James Ngigi Gachinga And Grace Wambui Kamau. He attached a Certificate of Search dated 12/11/2019 to that effect. He also attached a title deed in his name that was issued in 14/2/1986. A medical review form showing that Caroline Wambui was a patient at Kihara Level 4 psychiatric clinic was also attached. He sought to be issued with the grant of representation to the deceased as he was better placed to search for assets owned by the deceased.

13. In his submissions, the Objector reiterated that the suit property does not form part of the deceased's estate as the same now belongs to James Ngigi Gachiga and Grace Wambui Kamau.
14. The Petitioner failed to respond to the Objection and the Cross-Petition.
15. From the evidence on record, it is clear that land parcel no. Kiambaa/Kihara/T.394 is currently registered in the names of James Ngigi Gachiga and Grace Wambui Kamau as evidenced by the Certificate of Official Search dated 12/11/2019 which shows that the said persons were entered in the register on 5/11/1986. An earlier Certificate of Search provided by the Petitioner indicated that the Objector was the registered proprietor of the suit land having been issued with a title deed on 14/2/1986.
16. A probate court only deals with distribution of ascertained assets belonging to the deceased's estate. In the circumstances, therefore, and in the absence of any other documentary evidence to controvert that the land parcel no. Kiambaa/Kihara/T.394 is registered in the name of the deceased herein and/or is owned by the deceased, the court is satisfied that land parcel no. Kiambaa/Kihara/T.394 does not form part of the deceased's estate herein.

Findings and Determination**

17. For the forgoing reasons this court makes the following findings and determination;
 - i. This court finds the Objection to have merit and it is hereby allowed.
 - ii. No Grant shall issue to either the Petitioner or the Objector as there are no assets moveable or immoveable that have been ascertained as belonging to the deceased for this court to decide on the persons deserving the issuance of the requisite Grant to facilitate distribution.
 - iii. Both the Petitioner and the Objector are encouraged to work together and search for assets and liabilities that are owned by the deceased and there after move this court appropriately within thirty (30) days from the date hereof. In default this matter shall be deemed as closed.
 - iv. Each party shall bear their own costs.
 - v. Mention on 24th October 2023 for compliance

Orders Accordingly.

DATED SIGNED AND DELIVERED ELECTRONICALLY AT KIAMBU THIS 18TH DAY OF AUGUST, 2023

A.MSHILA

JUDGE

In the presence of

Mourice – Court Assistant



Mrs Njiru – for the Objector

N/A – by Petitioner

