



**In re Estate of Francis Muiruri Kimani (Deceased) (Succession Cause
492 of 2015) [2023] KEHC 22576 (KLR) (26 September 2023) (Judgment)**

Neutral citation: [2023] KEHC 22576 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MURANG'A
SUCCESSION CAUSE 492 OF 2015
J WAKIAGA, J
SEPTEMBER 26, 2023**

BETWEEN

GRACE WANJIKU MUIRURI APPLICANT

AND

IRENE WANGUI KIMANI RESPONDENT

JUDGMENT

1. On the 3rd day of June 1993 the Grant issued to Peter Muiruri Kimani In Pmcc Succession Cause No 169 of 1992 Muranga was confirmed. By application dated 23rd May 2008 the Objector/Applicant applied for revocation or annulment of the said Grant on the ground that the same was made and confirmed fraudulently by concealment to Court of material facts.
2. It was supported by the affidavit sworn by the Applicant Grace Wanjiru Muiruri in which it was deposed that the deceased was her father and that she was not invited for a family meeting to file the petition herein, that subsequently there arose an altercation between her and her brother the then Administrator which led to her being charged in Court with the offence of behaving in a manner likely to cause a breach of peace at Kigumo Law Courts at which the said Administrator shouted at her and called her a trespasser on her father's land LOC.7/GAKOIGO/660 where she had lived with her windowed mother.
3. That when she inquired in Court upon the advice of her Advocate, she realized that her brother had in 1993 secretly applied for and had Grant confirmed without involving other family members, in particular herself who had not consented to the same. Leading to her lodging a caution on the subject property.
4. The application was opposed by the Respondent, who filed an affidavit sworn by Irene Wangui Kimani, in which it was deposed that she was the window of the Administrator and a daughter in law



of the deceased. It was contended that the estate of the deceased had been distributed and therefore the summons would serve no purpose.

5. On 12th March 2013 the Applicant took out a Notice of Motion in which she sought for a prohibition against the suit properties pending the determination of the cause and an Order restraining the Respondent from disposing selling and or interfering with her occupation thereof on the grounds that the Respondent upon the death of the Administrator, filed Succession Cause No 948 of 2009 at Nyeri and transferred the suit properties to herself, including LOC.7/Gakoigo/660 wherein the Applicant lived with her hailing mother.
6. It was deposed that the Respondent had disposed of LOC.7 /Ichagaki /897 to one Mary Watiri Njogu who was a total stranger and not a beneficiary of the estate.
7. That Application was opposed by the Respondent through an affidavit titled supporting affidavit in which she deposed that it was not true that the Applicant her sisters and her mother in law were living on the suit property, the same having shifted in the year 2009 and that she only requested the Administrator to be allowed to occupy three of their rental rooms for three months as she looked for a place to live only for her to refused to move out.
8. It was contended that she filed Succession Number 948 of 2009 at Nyeri High Court in respect of what was owned by her husband who was an absolute proprietor of the property therein.
9. By a Ruling thereon dated 31st day of January 2014, the Court (Musyoka J) allowed the application and transferred the cause from Nairobi to this Court for determination of the application for revocation of Grant and that is how this cause found its way back to Muranga and before this Court for the determination of the said application.

Submissions

10. On November 18, 2018 the Court gave direction that the Application be heard by way of Written Submissions, which were duly filed and on behalf of the Applicant, it was submitted the consent used to have the Grant was fake as the Applicant did not sign the same. It was contended that in the mode of distribution, the Respondent's husband bequeathed to himself all the property of the deceased thereby disinheriting herself and their mother. It was contended that the grant was irregularly confirmed by concealing material facts both to Court and other beneficiaries as he excluded the Applicant and her sister Lucy Muthoni thereby disinheriting the same contrary to Section 76 of the *Law of Succession Act* and Article 27 of *the Constitution*.
11. In support of the Submissions, reference was made to the case of In re Estate of ATM [2017] eKLR to the effect that the law does not discriminate between male and female and that unless agreed upon the mode of distribution ought to be as provided for under Section 38 of the Act. In Anor v Kennedy Otieno Oderi [2014] eKLR the Court held that the identities of the beneficiary and their interest in the estate was material and once it is established that their interest was concealed, the Grant of representation issued is flawed. The same position it was contended was held in the matter of Joel Nguti Kingangi where the Court stayed that once it was not disclosed that the deceased had a daughter, the threshold of Section 76 of the Act was reached.
12. It was submitted further that the Grant was obtained by means of untrue allegations that Elizabeth Wangari who was illiterate could possibly sign the consent and that the Petitioner was under a duty of utmost good faith to make a disclosure to Court as was stated In Re Estate of Julius Ndubi Javan [2018] eKLR.



13. It was finally submitted that the Court should annul the Grant and the property revert back to the estate for re distribution without discriminating the Applicant as was stated In Re Estate of Francis Mwangi Mbaria [2-18] eKLR.
14. On behalf of the Respondent it was submitted that the Objector filed the application fifteen years after the Grant was confirmed having followed all due procedures and that the application was an afterthought as the Applicant was initially not interested in the estate as at the time when she filed the application she was experiencing marital problems, so she requested her brother for a place to stay at but later on refused to vacate.
15. It was submitted that the Objector did not offer any proof of the allegation that their mother could not append her signature to the consent being illiterate as was stated in the case of Augustine Johnstone Moi Kirigia v Catherine Muthoni Isumali Kirimi [2017] eKLR. It was contended that both Elizabeth Wangari Muiruri and Lucy Muthoni Muiruri, both who were present when the Grant was issued did not file any affidavit in support of the Objectors' claim as was stated in the case of In Re Estate of Stephen Kurgat Kimwei [2017] eKLR.
16. It was submitted that as at the time of filling the application, the Respondent had not obtained Grants of letters of Administration of the estate of her husband and therefore had no capacity to be sued and that rather than file her objection in the cause where the Grant was issued being PMCC Succession Cause No. 169 of 1992, the same opted to file afresh suit seeking to impugn the proceedings in Nyeri 948 of 2009 which is a Court of equal jurisdiction. It was contended that the suit property had since been transferred to the other beneficiary who had not been joined in this cause and therefore the objection should be dismissed.

Determination

17. It is clear from the issues raised that this is a matter which should not have been determined by way of affidavit evidence and Written Submissions as the issues raised by both the Objector and the Respondent required to be verified by way of cross examination. It is high time litigants take charge of their cause and should not burden the Courts to make determination on matters which requires determination based on contested facts by way of affidavit evidence which have not been authenticated.
18. Be that as it may since the parties had consented to this mode of determination, and noting that the said directions were given before this Court assumed jurisdiction over the matter I shall proceed to determine the same having cautioned myself of the dangers of relying on untested affidavit evidence.
19. The following issues are uncontested, the Grant in respect of the estate herein was granted in RMC Succession Cause NO 169 of 1992 at Muranga to Peter Muriruri Kimani deceased and that in the said application, he only named himself as a son of the deceased and Elizabeth Wangari Muiruri as the wife and the sole beneficiary of the estate and all the property therein were transferred to him as sole proprietor.
20. The Applicant herein moved the Court to revoke the Grant in the High Court of Kenya at Nairobi being Succession Cause No. 1072 of 2008 which was transferred to this Court as stated herein above.
21. It is not disputed that the Applicant is a daughter of the deceased herein and a beneficiary of his estate. What is not established as at the time of these proceeding is whether the same was being provided for by the deceased as at the time of his death.
22. It is clear that the Grant herein then was obtained through concealment of material facts to the Court as the Applicant's husband did not disclose the existence of his two sisters and neither did he provide for



the interest his mother as the widow. The issues raised by the Objector as to whether their mother was illiterate who could not sign the consent are purely matters of evidence which can only be determined through oral evidence and not affidavit evidence, in any event the same has not contested the said allegations.

23. I am therefore satisfied that the Objector has established her case on a balance of probability and consequently allow the objection herein by revoking the Grant issued herein to the Petitioner's husband on the strength of which the subject properties were transferred to him and subsequently to the Petitioner.
24. Having taken account, the age of this dispute and the nature of the claim of the Objector, I am of the considered view and direct that this matter be referred to mediation and it is ordered.
25. This being a family dispute each party shall bear their own cost.

DATED, SIGNED AND DELIVERED AT MURANGA THIA 26TH DAY OF SEPTEMBER 2023

J. WAKIAGA

JUDGE

In the presence of:

No appearance for parties and their Advocate

Jackline – Court Assistant

