



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

MILIMANI LAW COURTS

FAMILY DIVISION

SUCCESSION CAUSE NO. 538 OF 2005

IN THE MATTER OF THE ESTATE OF JOSEPHINE WARUGURU NJUGUNA

PETER NJUGUNA MUTIRIA.....APPLICANT

VERSUS

JANE NYAMBURA NGUNGA.....1ST RESPONDENT
MBUGUA NJUGUNA KAHUHI.....2ND RESPONDENT
MARY WAMBUI MUNYUA.....3RD RESPONDENT
REUBEN KIBUE THIONG'O.....4TH RESPONDENT

RULING

1. The deceased Josephine Waruguru Njuguna died intestate on 25th May 2002. There is no dispute that her children were:-

- a) Daniel Ndungu Njuguna;
- b) Mbugua Njuguna (2nd respondent);
- c) John Mutiria Njuguna (who died in 1996);
- d) Ngoiri Njuguna;
- e) Wanjiru Njuguna;
- f) Mary Wambui Munyua (3rd respondent);
- g) Jane Nyambura Ngunga (1st respondent);
- h) Nancy Njeri; and
- i) Mary Gathoni.

The applicant Peter Njuguna Mutiria is the son of the late John Mutiria Njuguna.

2. On 8th March 2005 the 1st respondent petitioned this court for the grant of letters of administration intestate in respect of the estate of the deceased. She obtained the consent of the 2nd and 3rd respondents. She swore that these were the only children of the deceased. She went on to obtain the grant on 26th January 2006 which was confirmed on 4th October 2006. She had deponed that the property the deceased had left was Dagoretti/Settlement Scheme/120. The distribution was that the 1st respondent was to hold it in trust for the other beneficiaries in equal shares.

3. On 6th August 2019 the applicant filed the present summons dated 18th July 2019 seeking the revocation of the grant as confirmed, and subsequently rectified on 8th June 2009. His complaint was that at the time of the petition and subsequent proceedings, he and the other children of the deceased were not involved, nor their consents sought or obtained; that parcel Dagoretti/Settlement Scheme/120 was not the true property of the deceased that could be shared by the respondents as the deceased had already given it to his late father; that the deceased was owner of Dagoretti/Settlement Scheme/43 which she shared and gave out to her children, including the respondents and therefore died with no property to be inherited; and that the respondents had concealed from the court all these facts, misrepresented the facts and had ended up disinheriting him.

4. In the sworn affidavit in support, he produced consents of the Land Control Board from Kikuyu to show that the deceased had subdivided Dagoretti/Settlement Scheme/43 into Dagoretti/Settlement Scheme/119, 120, 121, 122, 123, 124, and 125 which he had given to the 2nd respondent, the late Peter Mutiria Njuguna (father of the applicant), Josephine Wambui Munyua, 3rd respondent, Nancy Njeri, the 1st respondent and Mary Gathoni, respectively. Ngoiri Njuguna and Wanjiru Njuguna had declined the offer for land from the deceased. The deceased had not transferred the respective parcels to the children before she died. This information was known to the family, but the respondents had gone ahead to secretly petition for the grant and had ended up with the shares in the certificate of confirmation.

5. The applicant further swore that after his father's death, the 2nd respondent and Mary Gathoni had opposed his getting Dagoretti/Settlement Scheme/120 that was due to his late father. This had forced him to go to the District Land Disputes Tribunal at Kikuyu which had ruled that he gets the parcel, and the ruling had been adopted by the Principal Magistrate Court in **Misc. Application No. 7 of 2002**. He annexed the proceedings from the Tribunal and from the Court. The adoption was on 14th March 2004.

6. In reply to the application, the 1st respondent stated that the Land Disputes Tribunal proceedings were null and void as the Tribunal had no jurisdiction to determine a dispute relating to ownership of land. She stated that, in any case, Wanjiru Njuguna had appealed the decision in **Civil Appeal No. 393 of 2012**, and the appeal was pending. The 1st respondent was silent on the averment by the applicant that the deceased died having distributed her parcel of land, and after having given Dagoretti/Settlement Scheme/120 to the applicant's late father.

7. Mr. Musyoki for the applicant and Mr. Gitau for the respondents filed written submissions and made reference to decided cases. I have read the submissions and the decisions.

8. **Section 51(2)(g) of the Law of Succession Act (Cap. 160)** provides that an application for the grant of letters of administration intestate shall include information regarding the names and addresses of all surviving spouses, children, parents, brothers, sisters of the deceased and of the children of any of his/hers then deceased. The 1st respondent knew that her brother Peter Mutiria Njuguna had died and had left a son (the applicant) and yet petitioned for the grant without naming him or providing his address. She knew that the applicant was now a beneficiary of the estate of the deceased following the death of his father. She did not seek his concurrence or consent at the time of the petition and the subsequent distribution of the estate.

9. Secondly, the respondents knew that the deceased had shared her parcel of land Dagoretti/Settlement Scheme/43, and in particular was in the process of transferring its subdivision Dagoretti/Settlement Scheme /120 to the applicant's father and had obtained the consent of the Land Control Board. For all purposes, the deceased no longer owned Dagoretti/Settlement Scheme/120. It was no longer her free property capable of inheritance. The respondents knew that the portion was the subject of legal dispute, and that the Tribunal and the Court had determined that the parcel would go to the applicant. The fact of the appeal is not in dispute, but how could the respondents share a parcel of land that the Tribunal and the Court had given to the applicant? It is clear that all this information was concealed from the Court.

10. Without more, I find that the actions by the 1st respondent not to disclose all the material facts were fraudulent and intended to disinherit the applicant. I find that the proceedings leading to the grant and the certificate of confirmation were substantially defective. Under **section 76 of the Act**, I revoke the grant that was issued to the 1st respondent on 26th January 2006, and cancel and set aside the certificate of confirmation that was issued on 4th October 2006 and rectified on 8th June 2009. Any titles issued to the respondents over Dagoretti/Settlement Scheme/120 are hereby cancelled.

11. Now that the deceased had given Dagoretti/Settlement Scheme/120 to Peter Mutiria Njuguna who has died leaving the applicant, I direct that a fresh grant of letters of administration intestate in respect of the estate of the deceased Josephine Waruguru Njuguna shall issue in the name of the applicant Peter Njuguna Mutiria. A certificate of confirmation shall issue giving Dagoretti/Settlement Scheme/120 to the applicant Peter Njuguna Mutiria who shall hold it in trust for himself and for his sister Waithira Mutiria (according to the Tribunal proceedings) in equal shares.

12. The 1st respondent shall pay the costs of this application.

DATED AND DELIVERED ELECTRONICALLY AT NAIROBI THIS 19TH DAY OF JANUARY 2022.

A.O. MUCHELULE

JUDGE