



REPUBLIC OF KENYA
IN THE HIGH COURT KENYAAT MERU
(CORAM: CHERERE-J)
SUCCESSION CAUSE NO. 6 OF 1988
IN THE MATTER OF THE ESTATE OF NKOROI NKUMA (DECEASED)
BETWEEN
STEPHEN KAURA MBURUGU.....PETITIONER/RESPONDENT
AND
JERICA MWARI.....PROTESTOR/APPLICANT
RULING

Introduction

1. Deceased's died sometimes on 22nd April, 1985. According to the chief's latter dated 30th December, 1987, deceased was survived by the following:

- 1) Colleta Ncurubi - Daughter
- 2) Daria Kajuju - Daughter
- 3) Mwari Anjelica - Daughter
- 4) Stephen Kaura – who later in the proceedings described himself as deceased's step son

2. Deceased's comprised of **LR. ABOTHUGUCHI/GAITU/166** measuring 13 acres. Letters of administration were issued to the Petitioner on 13th January, 1988 and subsequently, the estate was by an order dated 21st April, 1989 distributed as follows:

- 1) Stephen Kaura - 4.45 acres
- 2) Colleta Ncurubi - 3.00 acres
- 3) Anjelika Mwari - 3.00 acres
- 4) Isaac Murori and Joachim Muriaikwa - 3.00 acres

Summons

3. By summons for revocation dated 19th November, 2020., Applicant seeks the following orders; -

- 1) **The letters of administration issued on 26th July, 1988 and grant confirmed on 21st April, 1989 be annulled**
- 2) **Applicant be appointed as the administrator of deceased's estate**

3) Any other orders

Protestor/Applicant's case

The Protestor/Applicant's case is contained in the application, the supporting affidavit and supplementary affidavit sworn by the Applicant on 19th November, 2020 on 20th May, 2021 respectively which are founded on the grounds that the Petitioner is not son of the deceased and had obtained the grant fraudulently by making false statements included his name among the beneficiaries of the deceased which he is not.

4. In her evidence, Protestor/Applicant maintained that the Petitioner was not their relative and was not entitled to benefit from deceased's estate. She disclosed that her sisters Colleta Ncurubi and Daria Kajuju were deceased. It was her evidence that her Daria Kajuju two minor sons were provided for but her two daughters were not. Protestor/Applicant's son Andrian Muriungi and cousin Brown Kaguru Maitima stated that Petitioner was not a relative of the deceased and ought not to have benefited from the estate. Joachim Muriakwa, son to deceased's daughter Daria Kajuju (deceased) similarly stated that Petitioner was not a relative and confirmed that he had two sisters Joyce Nkirote and Gladys Kaniaro who were not provided for from deceased's estate.

Petitioner/Respondent's Case

5. Petitioner/Respondent who stated that deceased was brother to his grandfather opposed the application for revocation of the grant mainly on the averments contained in his replying affidavit sworn on 08th March, 2021. He conceded that deceased had three daughters Colleta Ncurubi, Daria Kajuju and Mwari Anjelica. That upon the daughters getting married, he built the deceased a house and took care of him and regularly bought him his favourite soda Stoney for which he promised to bequeath him his land and that it was on that basis that he filed this cause with the consent of the Applicant and her sister Colleta and got a bigger share of the estate. He tendered search certificates to confirm that deceased's estate had been subdivided into 4 portions as follows:

1) LR. ABOTHUGUCHI/GAITU/1610 to Ncurubi Coleta M'Nkoroi

2) LR. ABOTHUGUCHI/GAITU/1611 to Jerika Mwari Nkoroi

3) LR. ABOTHUGUCHI/GAITU/1612 to Joachim Muriakwa and Isaac Murori

4) LR. ABOTHUGUCHI/GAITU/1609 apportioned to him was on the protest on 21st December, 2020 transferred to his sons

24th February, 2021 after the filing of

a. Collins Kirimi Stepjhen

b. Owen Mukaria Stephen

c. Mwongera Godfrey Murugu

6. Petitioner's first witness Philip Kimundu Gikunda conceded that Petitioner was not deceased's son and stated that he is the one that fixed beacons after deceased's land was subdivided in the presence of the Protestor/ Applicant. His 2nd witness Zaverio Mugira Muune stated that sometimes in 1984, he attended a meeting in which the deceased expressed his wish to give his land to the Petitioner.

Analysis and determination

7. I have considered the application in the light of the affidavits and oral evidence and also on the submissions filed on behalf of the Protestor and the issue for determination is whether a case has been made for revocation of the grant.

8. The Court in **Jamleck Maina Njoroge v Mary Wanjiru Mwangi [2015] Eklr** stated THAT;

The circumstances that can lead to the revocation of grant have been set out in Section 76 Law of Succession. For a grant to be revoked either on the application of an interested party or on the court's own motion there must be evidence that the proceedings to obtain the grant were defective in substance, or that the grant was obtained fraudulently by making of false statement, or by concealment of something material to the case, or that the grant was obtained by means of untrue allegations of facts essential in point of law.

9. In order to prove his case, the Petitioner had to show that she was a biological child step son or nephew of the deceased as pleaded or that he was given the land as a gift. Petitioner confirmed that he was neither deceased's son nor nephew and that the pleading that he was such step son or nephew was a **false statement of fact**.

10. Concerning the land being given by the deceased as a gift, did not make that particular pleading but instead claimed to have been step son and or nephew to the deceased.

11. Gifts *inter vivos* must be established by evidence. See the case of **In re Estate of The Late Gedion Manthi Nzioka (Deceased)[2015] eKLR** where it was held that:

For gifts inter vivos , the requirements of law are that the said gift may be granted by deed, an instrument in writing or by

delivery, by way of a declaration of trust by the donor, or by way of resulting trusts or the presumption of. **Gifts of land must be by way of registered transfer, or if the land is not registered it must be in writing or by a declaration of trust in writing.** Gifts inter vivos must be complete for the same to be valid. In this regard it is not necessary for the donee to give express acceptance, and acceptance of a gift is presumed until or unless dissent or disclaimer is signified by the donee. (Emphasis added). See in this regard Halsburys Laws of England 4th Edition Volume 20(1) at paragraph 32 to 51.

In Halsburys Laws of England 4th Edition Volume 20(1) at paragraph 67 it is stated as follows with respect to incomplete gifts:

“Where a gift rests merely in promise, whether written or oral, or in unfulfilled intention, it is incomplete and imperfect, and the court will not compel the intending donor, or those claiming under him, to complete and perfect it, except in circumstances where the donor’s subsequent conduct gives the donee a right to enforce the promise. A promise made by deed is however, binding even though it is made without consideration. If a gift is to be valid the donor must have done everything which according to the nature of the property comprised in the gift, was necessary to be done by him in order to transfer the property and which it was in his power to do.”

12. From the foregoing, it is apparent that the alleged gift of land by the deceased cannot be enforced for the reason that a gift of land must be by way of registered transfer, or if the land is not registered it must be in writing or by a declaration of trust in writing **which is the case in this cause.**

13. As a means of his attempt to defeat the Protestor/Applicant’s case, the Protestor on 24th February, 2021 well knowing that a protest had been filed on 21st December, 2020 caused **LR. ABOTHUGUCHI/GAITU/1609** that he had apportioned to himself to be transferred to his sons Collins Kirimi Stepjhen, Owen Mukaria Stephen and Godfrey Murugu.

14. From the foregoing analysis, I have come to the conclusion the Protestor/Applicant has proved her claim to the required standard. This court finds that the letters of administration issued on 26th July, 1988 and grant confirmed on 21st April, 1989 were **obtained fraudulently by making of a false statement and by means of untrue allegations of facts and by concealment of the fact that the Petitioner was a stranger to the deceased’s estate.**

15. The orders which commends to me and which I hereby issue are **THAT:**

- 1) The letters of administration issued on 26th July, 1988 and grant confirmed on 21st April, 1989 are hereby revoked
- 2) The Land Registrar Meru is hereby directed to cancel Title deeds LR. ABOTHUGUCHI/GAITU/1609, 1610, 1611 and 1612 are to revert the deceased’s land to its original title LR. ABOTHUGUCHI/GAITU/166
- 3) Jerika Mwari Nkoroi is hereby appointed as the administrator of deceased’s estate
- 4) Deceased’s estate shall be distributed in equal shares to the following:
 - a) 1/3 to Jerika Mwari Nkoroi
 - b) 1/3 to the family of Colleta Ncurubi (deceased)
 - c) 1/3 to the family of Daria Kajuju (deceased)
- 5) Petitioner/Respondent is condemned to pay the costs of this summons
- 6) The Administrator is directed to file an application for confirmation of grant not later than 30 days from today’s date

DATED AT MERU THIS 17TH DAY OF FEBRUARY 2022

WAMAE. T. W. CHERERE

JUDGE

Court Assistant - Morris Kinoti

For Protestor/Applicant - Mr. Karanja for Mwangi E.G & Co. Advocates

For Petitioner/ Respondent - Mr. Mutuma Kithinji for Kithinji Kirigiah & Co. Advocates