



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT KIAMBU

CIVIL APPEAL NO. 78 OF 2020

JAMES KIRONYO NJOROGE.....APPELLANT

-VERSUS-

RUTH WAITHERA NGUGI..... RESPONDENT

(An appeal from the Ruling/order of the Chief Magistrate's Court at Kiambu (**Hon. S. Atambo, SPM**) delivered on 20th December, 2019 in Kiambu Succession Cause NO. 159 of 2009)

JUDGMENT

1. This is an appeal against the Ruling of Kiambu Senior Principle Magistrate, *Stellah Atambo* of 2nd March, 2020. By that ruling, the trial court dismissed summons for revocation of grant, which summons were filed by **JAMES KIRONYO NJOROGE** (hereinafter **James Kironyo**).

2. The background of this appeal is the succession case filed before the Kiambu Magistrate's Court. In that Succession case, a petition for grant of letters of administration intestate was filed by **RUTH WAITHERA NGUGI (Ruth)**. In the petition, Ruth set out those who survived the deceased as follows:-

a. Ruth Waithera Ngugi – daughter-in-law

b. James Kihui Njoroge – step-son

c. Dominic Njoroge Kigamba – step-son

3. The grant issued to Ruth on 14th July, 2009 was confirmed on 3rd March, 2010 with the estate being distributed as follows:-

i. Ruth Waithera Ngugi – KIAMBAA/RUAKA/970 and 974

ii. James Kihui Njoroge – KIAMBAA/RUAKA/972 and 978

iii. Dominic Njoroge Kigamba – KIAMBAA/RUAKA/973

4. Dominic Njoroge Kigamba died before titles were issued and an application was made and allowed to rectify the grant to distribute the properties earmarked for his estate to go to his wife and children.

5. James Kironyo's application to revoke the grant was based on the provisions of section 76 of the Law of Succession act (Cap 160). Revocation was on the grounds that the grant was obtained fraudulently by making of false misrepresentation of facts; it was obtained by means of untrue allegations of facts; and it was obtained by concealment of material facts.

6. In the affidavit in support of the revocation of application, **James Kironyo** deponed that the deceased of the estate, **Grace Wanjiku Njoroge** deceased, was his mother. His mother was co-wife to the three other wives of **Njoroge Muchiri Kirunge** deceased. **Grace Wanjiku Njoroge** had two sons, **James Kironyo** and **Stephen Ngugi** deceased. He deponed further that he was the only surviving son of the deceased in the estate before court. The following are some of the depositions of James Kironyo:-

“4. That my mother died on the 14th January, 2002 thereby leaving my brother (Stephen Ndungi) and myself as the only heirs

to her estate. (Attached herewith and marked JNK 1 is a copy of the death certificate and identity card).

5. That after the demise of our mother, I gave the original title No. Kiambu/Ruaka/974 and my late mother's death certificate to my brother (Stephen Ndungi) for safe custody which he held until his death in the year 2004. (attached herewith and marked JNK 2 is a copy of my application for caution against the said land).

6. That since the death of my brother I have never been able to trace the documents that I had given to him. As a matter of fact, I recently realised (through my advocate on record) that one Ruth Waithera Ngugi (my late brother's wife) had applied for letters of administration intestate and a grant of the same issued on the 3rd March, 2010 without involving me. (Attached herewith and marked JNK 3 is a copy of the certificate of confirmation of grant and Court file perusal letters).

7. That I also discovered that one RUTH WAITHERA NGUGI had also fraudulently transferred Land Title No. KIAMBURUAKA/974 to her name without even mentioning the same to me.

8. That the grant of letters of administration intestate given to one RUTH WAITHERA NGUGI was fraudulently done after concealing material facts.

9. That the grant of letters of administration intestate given to one RUTH WAITHERA NGUGI was fraudulently done after concealing material facts.

10. That I am advised by my advocate on record that RUTH WAITHERA NGUGI had no right whatsoever to administer the estate of my late mother without involving me.

11. That I am advised by my advocates on record that the subsequent transfer of my late mother's land to her name was fraudulent and illegal."

7. Ruth filed a replying affidavit to the application. The deposition in that affidavit refers to the original title **KIAMBAA/RUAKA/60** which was bequeathed to two wives namely, **Grace Wanjuhi Njoroge Deceased** and **Freshia Kabui Njoroge Deceased**. That property KIAMBAA/RUAKA/60 was in the name of Njoroge Kironyo (deceased) the husband of the two wives. The annexed green card of that property shows that title was closed under **Kiambu Succession Cause No. 35 of 1992** and on its subdivision, new titles were issued being **KIAMBAA/RUAKA/970 to 979**.

8. James Kironyo does not deny that **KIAMBAA/RUAKA/975 and 979** were registered in his name but he subsequently transferred the same to his wife. The other parcels of land that resulted after the closure of the original title **KIAMBAA/RUAKA/60** were distributed to Ruth and the other two beneficiaries of the estate as stated above.

9. James Kironyo by his further affidavit stated that his sister in-law Ruth and his step brothers had no *locus standi* to administer his late mother's estate to his exclusion.

ANALYSIS

10. I will begin by considering the argument raised both before the trial court and before this Court that Ruth did not have priority over James Kironyo in the administration of the estate of Grace Wanjuhi Njoroge deceased.

11. **Section 66 of Cap 160** provides the court with final discretion as to the person or persons to whom a grant of Letters of Administration are made in the best interest of all concerned. Section 66 provides as follows:-

"66. When a deceased has died intestate, the court shall, save as otherwise expressly provided, have a final discretion as to the person or persons to whom a grant of letters of administration shall, in the best interests of all concerned, be made, but shall, without prejudice to that discretion, accept as a general guide the following order of preference-

(a) surviving spouse or spouses, with or without association of other beneficiaries;

(b) other beneficiaries entitled on intestacy, with priority according to their respective beneficial interests as provided by Part V;

12. The trial court responded to that the issue raised by James Kironyo by tracing the history of the property and considered the provisions of **Section 66 of Cap 160** and indeed found that James Kironyo ranked in priority to Ruth to be appointed administrator. The trial court posed the question as follows:-

"However, should the ranking in priority be a ground for revocation of grants as provided under Section 76 of the Law of Succession Act?"

13. **Section 76 of Cap 160** provides as follows:-

"A grant of representation, whether or not confirmed, may at any time be revoked or annulled if the court decides, either on application by any interested party or of its own motion:-

(a) That the proceedings to obtain the grant were defective in substance;

(b) That the grant was obtained fraudulently by making of a false statement or by concealment from the court of something material to the case;

(c) That the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant notwithstanding that the allegation was made in ignorance or inadvertently;

14. The trial court on posing the above question proceeded to find that James Kironyo inherited **Parcel Nos. 975 and 979** and that his seeking revocation of the grant was intent on disinheriting his sister-in-law Ruth.

15. **Section 76 of Cap 160** will allow revocation of a grant where the proceedings are defective; where the grant was obtained fraudulently by making false statement or by concealment to court of something material; or that the grant was obtained by means of untrue allegations.

16. In the case **In re ESTATE OF MAGANGI OBUKI (DECEASED (2020) eKLR** the court considered the circumstances under which a grant can be revoked and stated:-

“In the case of JAMLECK MAINA NJOROGI V MARY WANJIRU MWANGI (2015) eKLR the court discussed circumstances when a grant can be revoked. The court observed:

“11. 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.”

17. Justice Mwita in the case **ALBERT IMBUGA KISIGWA VS. RECHO KARAI KISIGWA (2016) eKLR** stated:-

“[13] Power to revoke a grant is a discretionary power that must be exercised judiciously and only on sound grounds. It is not discretion to be exercised whimsically or capriciously. There must be evidence of wrongdoing for the court to invoke section 76 and order to revoke or annul a grant. And when a court is called upon to exercise this discretion, it must take into account interests of all beneficiaries entitled to the deceased’s estate and ensure that the action taken will be for the interest of justice.”

18. Ruth when she petitioned for a grant of letters of administration clearly stated that she was a daughter in law of the deceased while the other beneficiaries were step sons. Ruth therefore did not make an untrue allegation nor did she make fraudulent statement in her petition.

19. The trial court was right on point in considering the entitlement of the estate of the deceased. James Kironyo in 1993 obtained two parcels from the deceased namely, Nos. 975 and 979. Those two parcels were subdivisions, amongst others, of the original title parcel No. 60. ***Grace Wanjuhi Njoroge*** deceased obtained those sub-division through her late husband’s estate. Her late husband was also a husband of three other wives who all had children with him. It is very clear that parcel No. 60 in the late husband’s name was to be shared by all those houses. James Kironyo obtained his inheritance in 1993 from his mother as administrator of her late husband’s estate before she died. It would seem that James Kironyo’s mother had not transferred the inheritance due to Ruth’s husband and to the two of her step sons whom Ruth included as beneficiaries in this cause. James Kironyo’s act to seek to have the grant revoked would seem actuated by another motive other than to have the law of priority of appointment of administrator upheld.

20. This Court, just like the trial court, finds that Ruth did not commit fraud nor did she obtain a grant by means of untrue allegation and there indeed was no defect in the proceedings that led to the issuance of the grant. Ruth clearly stated in her petition that she was the deceased’s daughter-in-law and that was the truth.

21. In conclusion therefore, this Court finds there is no merit in this appeal and the finding of the trial court is upheld. The appeal is dismissed with costs to **Ruth Waithera Ngugi**.

JUDGMENT DATED AND DELIVERED AT KIAMBU THIS 24TH DAY OF MARCH, 2022

MARY KASANGO

JUDGE

Coram:

Court Assistant : Maurice

For appellant : - James Kironyo – Mr. Gichuki

For Respondent : - Ruth Waithera Ngugi – Mrs. Ndungu

JUDGMENT delivered virtually.

MARY KASANGO

JUDGE