



**In re the Estate of the Late Peter Kanjaru Ndegwa (Succession Cause
88 of 2016) [2022] KEHC 13056 (KLR) (22 September 2022) (Judgment)**

Neutral citation: [2022] KEHC 13056 (KLR)

REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
SUCCESSION CAUSE 88 OF 2016
MM KASANGO & MM KASANGO, JJ
SEPTEMBER 22, 2022

**IN THE MATTER OF THE ESTATE OF THE LATE PETER
KANJARU NDEGWA**

NDEGWA KANIARU KOMU.....1ST
APPLICANT

SOLOMON MUTURI NJUNGE.....2ND
APPLICANT

**JOSEPH NDUNGU NGOTHO (SUING AS REPRESENTATIVE
OF THE ESTATE OF THE LATE NGOTHO NDEGWA.....3RD**
APPLICANT

VS.

STEPHEN NDEGWA
KANIARU.....RESPONDENT

JUDGMENT

1. Peter Kaniaru Ndegwa (deceased) whose estate is the subject of this succession cause died on 8th January, 2000. In May 2001 Stephen Ndegwa Kaniaru (Stephen) his son petitioned for grant of letters of administration intestate for the deceased's estate. By that petition, Stephen listed all the deceased's beneficiaries as set out in the chief's letter dated 5th July, 2001. A grant dated 7th October, 2002 was issued to Stephen, which grant was confirmed on 8th October, 2003. That grant was subsequently rectified on 8th December, 2015.
2. For consideration in this judgment is summons dated 14th July, 2016 for revocation of the aforesaid grant.



3. The summons is filed by three applicants: namely, Ndegwa Kaniaru Komu (Ndegwa), Solomon Muturi Njunge (Solomon) and Joseph Ndungu Ngotho (Joseph). The summons are brought under the provision of Section 76 of the Law of Succession Act, Cap. 160. The court received viva voce evidence from the parties. The parties also relied on filed affidavits.
4. Ndegwa's mother Jane Wanjiru Kaniaru alias Jane Mukami Kaniaru predeceased the deceased hereof. She was his daughter and accordingly, Ndegwa was grandson of the deceased hereof. Ndegwa's evidence was that the deceased had two wives, namely, Ruth Wanjiru and Naomi Wanjiru Kaniaru. The latter was Ndegwa's grandmother. Ndegwa stated that following the death of his mother on 17th July, 1993 in Mombasa he in 2005 moved to the deceased's properties in Muguga. That since that date, he had resided on part of deceased's properties Muguga/muguga 1518 and 1519 and had cultivated on part of 1518, 1519 and 1521. That prior to filing the summons he had been requested by Robert Mwaura Ngugi to desist from cultivating land 1521. On making inquiries, he found that there had been a succession cause over the deceased's estate which he deponed was filed without disclosure to the children of Naomi Wanjiru's house. That in particular, Teresia Njeri Kinyanjui, (Teresia) a daughter of Naomi Wanjiru, had not been informed of the filing of this succession cause nor had she signed the consent filed when the succession was filed. That Teresia denied the signature appearing next to her name, in the consent to petition for grant of letters of administration intestate, was hers.
5. Joseph's case is that he was grandson of Ngotho Ndegwa (deceased). Ngotho Ndegwa (deceased) was brother of the deceased hereof. That the deceased hereof inherited land from his and Ngotho Ndegwa (deceased) father which he was required to hold in trust for himself and in trust for Ngotho Ndegwa (deceased). That the deceased hereof failed to give Ngotho Ndegwa (deceased) his portion of land but rather subdivided the same into 5 pieces which he registered in his name. That consequently, the wife of Ngotho Ndegwa (deceased) sued the deceased hereof in the case HCCC 3023 of 1997. In that case an ex parte, interim orders of injunction was issued on 15th December, 1997 restraining the deceased hereof from transferring charging selling the five pieces of land. Joseph therefore seeks that half of the land of the deceased hereof be given to the family of Ngotho Ndegwa (deceased), his late father.
6. Solomon's father was Njunge Komu (deceased). Solomon's case is that his late father was not aware of this succession, even though he was a son of the deceased hereof. Solomon in his affidavit deponed, in part as follows:-

“That my late father was the first born son of the deceased and I verily believe that he was not aware of the proceedings in this case otherwise he would have told me about it had he known.”
7. On being cross-examined, Solomon stated that he himself was aware of the succession cause and that his late father Ngotho Ndegwa (deceased) was also involved in this succession. On being questioned on the consent which bears his late father's signature, Solomon retorted:-

“I am sure that my father never signed these consents.”
8. Although he denied while being cross examined that his late father inherited property from the deceased hereof, on being alerted of his deposition in his affidavit, Solomon stated:-

“Yes father inherited apportion of the estate.”



Analysis and Determination

9. The three applicants, Ndegwa, Solomon and Joseph having moved the court for the revocation of the grant issued to Stephen needed to meet the threshold of revocation of grant set out in Section 76 of Cap 160. That Section's relevant parts thereof provides that a grant of representation, whether or not confirmed, may at any time be revoked or annulled if the court finds the proceedings to obtain the grant were defective in substance; that the grant was obtained fraudulently by making false statement or by the concealment from the court, something material to the case; that the grant was obtained by means of untrue allegation of a fact essential in point of law to justify the grant notwithstanding that the allegation was made in ignorance or inadvertently.
10. Each applicant provides diverse grounds why the grant issued to Stephen should be revoked. I will therefore consider those grounds and decide on the facts seriatim.
11. Ndegwa's case is that his late mother was the daughter of the deceased hereof. She passed away before the deceased hereof. He contends Stephen failed to inform him as the grandson of the deceased hereof about his succession.
12. Ndegwa as a grandson of the deceased hereof is entitled to inherit his grandfather's estate through his mother, the daughter of his grandfather but where the mother predeceased the deceased hereof Ndegwa was entitled to step into his mother's shoes and inherit: See the case *Re Estate of Wabome Njoki Wakagoto* (2013) eKLR as follows:-

“Under Part V, grandchildren have not right to inherit their grandparents who die intestate after 1st July 1981. The argument is that such grandchildren should inherit from their own parents. This means that the grandchildren can only inherit their grandparents' indirectly through their own parents, the children of the deceased. The children inherit first and thereafter grandchildren inherit from the children. The only time grandchildren inherit directly from their grandparents is when the grandchildren's own parents are dead. The grandchildren step into the shoes of their parents and take directly the share that ought to have gone to the said parents.”
13. With that in mind has Ndegwa proved that Stephen obtained the grant fraudulently by making false statement or concealment of something material or did he prove the grant was obtained by untrue allegation?
14. Ndegwa's evidence was that he lived with his single mother in Mombasa. He contends he returned to deceased's property in the year 2005. Stephen however contends that Ndegwa returned in the year 2015. Ndegwa did not prove to the required standards of proof that Stephen was aware of his existence in October, 2002 when the grant was obtained. There is indeed no evidence that Stephen concealed the existence of Ndegwa when petitioning for grant of letters of administration intestate.
15. Ndegwa's claim will however fail because there is no evidence that Ndegwa obtained a grant of his late mother's estate to enable him step into her shoes to claim his entitlement to inherit through his late mother. After all, Ndegwa was only entitled to inherit the share of the deceased's estate that his late mother could have inherited.
16. It was not clear to this Court what the claim of Solomon was when filing the summons for revocation. This is because his claim is that of a grandson of the deceased hereof, though his father Njunge Komu (deceased). The said Njunge Komu deceased obtained title 1518. Solomon is only entitled to inherit



that which his father inherited and no more it follows that Solomon's claim must and does fail. There is no evidence of fraud or material non-disclosure by Stephen, in as it concerns, the claim by Solomon.

17. The third applicant, Joseph's claim is that the deceased hereof held property in trust for his late father. It follows that property in trust for his late father. It follows that his claim is for declaration of Trust. Such a declaration cannot be determined in the probate court. Such jurisdiction is solely exercised by the Environment and Land Court. That indeed was what was held in the case *Joseph Koori Ngugi vs. Stephen Ndichu J. Mukima* (2017) eKLR as follows:-

“A claim for an equitable interest in land is a claim against the legal owner of land and hence a dispute over ownership of the land. I am persuaded that the drafters of the Kenyan Constitution intended such questions to be determined in the ELC. The text of the Constitution and section 13 of the ELC Act seems perfectly clear to me on that question”.

18. This Court therefore, lacks jurisdiction to determine Joseph's claim. I also find that nothing turns on the allegation that Stephen failed to disclose the existence of an injunction restraining the dealing of deceased's properties. Two issues arise from that argument. Firstly, is that the injunction was against the deceased hereof. There was no evidence adduced that when the grant was confirmed on 8th December, 2015, that the said injunction was still subsisting against the title. Further, and most importantly, the suit under which the injunction was issued abated following the death of the deceased hereof. It follows that the claim of Joseph fails entirely.
19. Teresia swore an affidavit and testified in court stating that she did not sign the consents filed when the petition was filed and when confirmation of the grant was sought. Teresia did not report to the police that her signature was forged, if indeed it was. But more importantly, is that the signatures of both those consents were done in the presence of commissioners of oaths who were not called to confirm that Teresia did not sign the consent.
20. On the whole, I find and hold that the applicants singularly and collectively failed to meet the civil standards of proof for the revocation of grant.
21. Accordingly, the summons dated 14th July, 2016 is dismissed with no orders as to costs.

RULING DATED AND DELIVERED AT KIAMBU THIS 22ND DAY OF SEPTEMBER, 2022.

MARY KASANGO

JUDGE

In the presence of

Coram:

Court Assistant : Mourice

For Applicant: - Ms. Njogu

For Respondent: N/A

Ruling delivered virtually.

MARY KASANGO

JUDGE

