



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

SUCCESSION CAUSE NO. 205 OF 2005

IN THE MATTER OF THE ESTATE OF MURITHI KAJARIA alias MURITHI S/O KAJARIA (DECEASED)

JENNIFFER MPINDA M'MURITHI.....PETITIONER

VERSUS

JOSEPH KABURU M'MURITHI.....OBJECTOR

AND

M'MARETE M'MURITHI KAJARIA.....1ST INTERESTED PARTY

HELLEN KARORI M'MURITHI.....2ND INTERESTED PARTY

RULING

1. The two applicants while asserting being the son and daughter of the deceased and step siblings to the petitioner and the objectors. They seek that the grant issued to the petitioner and confirmed on the 19.07.2017 be revoked on account of concealment of material facts from the court, that afresh grant be issued to them and there be issued orders of inhibition against two properties of the estate being KIBIRICHIA/KIBIRICHIA/5747 and 5748 pending determination of the application.

2. The grounds disclosed on the face of the application and the affidavit in support are that while applying for the grant and seeking the confirmation and distribution, the petitioner concealed from the court the existence of some of the deceased daughter and that the deceased only had two houses and not three and by lodging the cause discretely without information to the majority of the heirs and has since embarked on the wanton destruction of the property including those owned by other dependants but being on the estate property.

3. In their position the deceased had three wives and thus three houses in which House A had three children, House B had five children while house C also had five children. Four daughters are singled out as having died but survived by children who are entitled to part of the estate but were excluded at distribution. Lastly it is asserted that sometimes in October 2018, the petitioner invaded the land on which the 1ST interested party lives and fell down the trees growing thereon, carted same away and had embarked on erecting a fence across the property with a notice to the said 1ST applicant to vacate the portion he has always occupied and lived on.

4. The application was resisted by the petitioner by the Replying Affidavit sworn on the 29.11.2018 whose gist was that no concealment was committed; the applicant was always aware of the proceedings and that the applicant and his Josephat Kaburu M'murithi even filed objection proceedings which was never prosecuted. On marital status of the deceased, there was admission that he was polygamous but married to two wives, not three, and that the estate was shared on the basis of two houses with the 1ST house where the applicants belong getting 4.4 acres with the second house getting the balance of 4.4 acres. On beneficiaries not mentioned in the certificate of confirmation, the petitioner asserted that all come from the applicant's house and that he has no objection to the grant getting rectified to disclose them with a parting short that the second applicant has not been seen in the entire life of the petitioner and that the grant has been implemented by having the estate shared in two halves.

5. That replying affidavit was responded to by the applicant in the Supplementary Affidavit filed on the 01.02.2019 in which it is reiterated that one house was disinherited as well as the deceased sister while introducing a stranger called John Kigunda to the estate.

6. The application was canvassed by way of written submissions filed by the applicant/2nd interested party on the 27.10.2020 and by the Petitioner /Respondent on the same date. On the date the matter came for directions, the objector indicated to court that it had not filed any submissions because it supported the application.

7. In his submissions the applicant reiterates the acts in the application while underscoring the law that a grant, whether confirmed or not, may be revoked at any time by the court on application or on own motion if the thresholds under section 76 of the act are demonstrated. In the instant case the applicants position is that concealment of one family unit of the estate was said to be sufficient for impugning the grant thereby issued.

8. For the petitioner, it was argued that the dispute is limited to the distribution of one property of the estate being Kibirichia/Kibirichia/533 which was shared equally between the two family units. The petitioner contends that the distribution into two portions for the two units was legal and in accordance with the provisions of sections 35, 38 & 40 of the Act in that each of the two units had five children. Having been so done, the petitioner contends that if there is discontentment with the applicant's house then it is him who has failed to share with his siblings.

9. On the allegation that the 2nd applicant is a daughter to the deceased from the house of Veronica Nchekei, the petition denies knowledge of her being a sibling and asserts having never met her in life and during the pendency of the cause and that all previous documents filed including the chief's letter and the objection proceedings by the current applicant, which was dismissed and stands dismissed, did not mention the 2nd applicant. Accordingly, the petitioner views the current application and the existence of the 2nd applicant as an afterthought and not supported by the basics of evidence including a birth certificate or an identity card. However, the petitioner makes a very bold, but I consider same in good faith, proposal that if it be established that the 2nd applicant is a child to the deceased then she gets her share of the estate from the two portions of Kibirichia/kibirichia/533 as subdivided.

10. I have had the benefit of studying the papers filed and my mandate is simple; to determine whether there was material concealment of fact and thus a justification to revoke and annul the grant. There is a good reason that the court be assisted in the identification of the beneficiaries to every estate and the confirmation by those on the ground as administrators cannot be underrated. In this matter, the letter by the Chief, Ntugi location, dated the 12.05.2005 never identified the 2nd applicant as a child to the deceased. Where there is an apparent failure to exhaustively capture all, it is the duty of other beneficiaries to reveal such to court in an honest and timely manner. In deed while the applicant maintains that the cause was lodged secretly, he had been made aware of the cause as early as the 14.09.2005 when he filed the objection dated the 12.09.2005. In that objection, he only mentioned the second applicant as one whose mother had denounced as a child to the deceased and swore that the deceased had two houses or family units not three. I notice that.

11. In the circumstances revealed in this matter, one gets the impression that the applicant has not been candid with the court and may now be confirming the complaint by the petitioner in the affidavit sworn on the 01.03.2005 that the applicant had chased all siblings from the suit property so as to enjoy it to their exclusion. My finding is that the second applicant, who has never filed any Affidavit in this matter is yet to demonstrate being a daughter to the deceased, and her exclusion from the list of beneficiaries is not a basis to revoke or annul the grant. For the sake of bringing litigation to an end, and on the spirit of Rule 73 of the Probate and Administration Rules, I direct that the said 2nd interested party, if interested in pursuing her interests in the estate file an appropriate application for provision within 30 days from today. Subject to such steps being taken, the grant now in force as confirmed ought to be enforced and implemented and the file brought to a close. This matter shall be mentioned on 24.05.2021 for further directions.

12. That however is not to say she is not daughter. Being a daughter or not must be established by evidence and it must be left to the person of the 2nd applicant to meet that obligation. It is to me inexplicable why the 2nd applicant hasn't come out to establish her right and left it to the 1st to talk on her behalf.

13. The upshot is that I find no merit in the request to revoke or annul the grant and I order it dismissed with each side bearing own costs.

DATED, SIGNED AND DELIVERED VIRTUALLY VIA MICROSOFT TEAMS THIS 30TH DAY OF APRIL, 2021

Patrick J O Otieno

Judge