



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KIAMBU

SUCCESSION CAUSE NO. 31 OF 2020

IN THE MATTER OF THE ESTATE OF PAULINE WAKONYO WANYOIKE MWAURA (DECEASED)

MARY WANGARI NDUNGU.....APPELLANT

VS

JAMES MWAURA NJOKI.....RESPONDENT

RULING

1. Before me is the application, by summons dated 10th November, 2020. It is filed by **CAROLINE NJERI WAKONYO (Caroline)** and **NWW (N)**. They seek for the order made by this Court on 29th October, 2020, by Justice Meoli, to be set aside and that this Court be pleased to issue a certificate of confirmed Grant as sought by their summons dated 18th September, 2020.

BACKGROUND

2. This succession relates to the estate of **PAULINE WAKONYO WANYOIKE** (deceased). The deceased was mother to **Caroline**, the first born, **NWW**, second born and **AWK**, third born and am minor. The deceased died on 30th January, 2010.

3. Caroline petitioned for Grant Letters of Administration of her late mother's Estate, the deceased, before the Kiambu Chief Magistrate Court, being Succession NO. 96 of 2018. In her affidavit in support of her petition, Caroline deponed that she was deceased's daughter while the second and third born of the deceased she deponed they were grandchildren of the deceased. She also deponed that the property L.R. NO. xxxx on LR. NO. xxxx/xx (Original No. xxxx/xx/x) the deceased's property was valued at Kshs.100,000/=.

4. Caroline was issued with a Grant by the Kiambu Chief Magistrate's Court, which was dated 7th May, 2018. That Grant was confirmed by that court on 18th December, 2018. Although LR. NO. xxxx/xx was not subdivided in any plan, Caroline proceeded to indicate in her application for confirmation of grant, before that court, the various portion that she would inherit and also indicated portions of that property that she would hold in trust for 2nd and 3rd born, her siblings.

5. In the succession cause before Kiambu Chief Magistrate's Court, the court was moved by summons for revocation of Grant dated 7th February, 2020. That summons for revocation was filed by Anthony Kamau Wanyoike (Anthony) and George Gaithuma Wanyoike brothers of the deceased and therefore maternal uncles to Caroline and her siblings.

6. In the affidavit in support of the summons for revocation those maternal uncles stated that the deceased was unmarried at the time of her death. She was survived by her three children, Caroline (adult), NW (minor) and AK (Minor). That Caroline filed the succession cause before Kiambu Chief Magistrate's Court without disclosing the same to her maternal uncles and aunts. That Caroline, long before filing the petition for grant of letters of administration, began the process of selling the estate's property and to that end had received part payment of the purchase price. The deponents attached to their affidavit an acknowledgment by Caroline dated 14th February, 2019, whereby Caroline acknowledged receipt of purchase price Kshs.7,903,726/= leaving a balance of Kshs.2,096,274. It was deponed that Caroline had sold the property even that which she indicated in the confirmed grant she was holding in trust for her siblings. Further, that Caroline had used the part payment for the purchase price for her own use to the exclusion of her siblings.

7. The maternal uncles further stated that Caroline had committed fraud in filing the succession before the Kiambu Chief Magistrate Court in that she stated she was the sole surviving daughter of the deceased; that in filing the petition as a sole administrator instead of having more than one administrator since deceased had minor children; she deceived the Chief Magistrate's Court in understating the value of the deceased property, which property is a four acre prime property valued at approximately 20 million per acre; that Caroline filed the petition at Kiambu Chief Magistrate's Court and not at Kikuyu Senior Principal Magistrate's Court where the estate property is situated; that

Caroline assigned false surnames to her siblings whose names are reflected in the birth certificate as NKW born 4th June, 2002 and AWK born 21st August, 2004; and that Caroline's distribution of the estate property was skewed in her favour and was not supported by any subdivision or distribution map.

8. The summons for revocation of grant was before the Chief Magistrate's court on 21st February, 2020 when that court on realising that the estate's property was valued at approximately Kshs.80 million, and therefore it was a matter beyond that court's pecuniary jurisdiction that court "downed its tools" and declined to continue hearing the matter.

9. The succession before the Kiambu Chief Magistrate's court was transferred to Kiambu High Court being Kiambu High Court Succession Cause No. 31 of 2020, now this matter. Before this court, a consent was recorded on 21st July, 2020 between counsel for Caroline Ms. Nderitu and counsel for the maternal uncles, Mr. Orina. That consent was in the following terms:-

"By consent the grant issued in the Lower Court on 7th May, 2018 and confirmed in December, 2018 is hereby revoked. By further consent, Caroline Njeri Wakonyo and NKW, who is now of age, are hereby appointed as co-administrators of the estate of the deceased. A fresh grant will issue. There is liberty to apply for confirmation before the lapsing of the six months statutory period."

10. Following that consent, Caroline and N filed an application dated 18th September, 2020 for confirmation of the grant issued by consent to Caroline and N. They provided a proposed map of subdivision of the estate property, in total, showing 15 parcels. That application for confirmation of grant was before this Court on 28th October, 2020 when the court confirmed the grant.

11. On 29th October, 2020, it would seem on this Court's own motion it made an order which I produce herein under:-

"IN CHAMBERS ON 29TH OCTOBER 2020 BEFORE HON. LADY JUSTICE C. MEOLI

ORDER

This matter coming up for Summons for Confirmation of Grant on 28th October, 2020 AND BY A FURTHER ORDER dated 29th October, 2020;

IT IS HEREBY ORDERED:

- 1. THAT the confirmed grant will issue in the names of children of the deceased Caroline Njeri Wakonyo, NWW and one maternal uncle namely Anthony Kamau Wanyoike.***
- 2. THAT assets listed in the proposed schedule of distribution at items 11 to 15 will be shared equally by the three beneficiaries herein, namely Caroline Njeri Wakonyo, NWW and AWK. The shares due to AWK therein to be held in trust for him by the three administrators.***
- 3. THAT leave is hereby granted to the administrators to apply to the court in the event of specific need to dispose any of the assets at items 11 to 15 for the purpose of their upkeep, education or for the administration of the estate.***
- 4. THAT all other shares due to the minor AWK at item 3, 8, 9 and 10 of the schedule of distribution to be held in trust for him by the three administrators.***
- 5. THAT distribution of assets at items 1,2,4,5,6,7 and 16 of the proposed schedule to remain as per the schedule."***

SUMMONS DATED 10TH NOVEMBER, 2020

12. The above stated summons is filed by Caroline and N. By that application they seek orders to stay issuance of certificate of confirmed grant as ordered on 29th October, 2020, reproduced above; they also seek the setting aside of the order of 29th October, 2020 and the issuance of a confirmed grant as ordered on 28th October, 2020.

13. Both Caroline and N filed one affidavit sworn by both of them in support of the application. They deponed that the hearing of this matter on 28th October, 2020 involved all the beneficiaries of this estate and the distribution of the estate made on that day was the subject of all parties consent after discussion with the learned judge, Meoli. The deponent further stated that their maternal uncle, George Gaithuma Wanyoike, who was appointed as their co-administrator by the order of 29th October, 2020, has on several occasions intimidated them and exerted duress against them because of the deceased property. The deponents also stated that the order of 29th October, 2020 was issued without affording them a hearing.

ANALYSIS

14. When Caroline filed the petition for grant of Letters of Administration before the Kiambu Chief Magistrate's court she was the only adult child of the deceased, her mother. The other two N and A were minor children. Undoubtedly Caroline had fiduciary duty to act in a way that was to minor siblings benefit. Despite holding such a responsibility, Caroline in her affidavit dated 18th March, 2018 in support to the petition deponed falsely, that N and A were grandchildren of their deceased in this succession. It would also seem that she had entered into a

sale transaction to sell some part of the deceased's estate property and had received payment as at 14th February, 2019 of Kshs.7,903,726/=. Those two very critical issues that shows the character of Caroline were brought to light by the maternal uncles, namely Anthony Kamau Wanyoike and George Gaithuma. To date, Caroline has not offered an explanation of why she falsely described her brothers as grandchildren of their deceased mother and why she did not explain how the sale transaction was undertaken and to what benefit it was to her two younger brothers, who were then minors, namely N and A.

15. I bring this aspect of Caroline's character because in my view it was the very basis upon which Justice Meoli acted upon and made the order of 29th October, 2020. It is material in my view to reproduce the proceedings of Justice Meoli of 29th October, 2020.

"29.10.2020

Before Meoli J.

Order

Since confirming the grant herein, the court has taken time to review the proceedings in Kiambu CM's SUCC. Cause No. 96 of 2018 and in particular the application by Anthony Kamau Wanyoike and George Gaithoma Wanyoike filed on 10th February, 2020 and allowed by this Court by consent after the lower court cause was transferred to this Court. The applicants therein are maternal uncles of the beneficiaries herein, being siblings of the deceased. By the consent recorded before this Court 21/7/2020, the grant that had been issued to the deceased's eldest daughter Caroline Njeri Wakonyo was revoked and she and her siblings as joint administrators. The court has considered the following subsequent to confirmation:-

- a) Matters raised in the application filed on 10/2/2020 with regard to the administration of the estate of the deceased and the alleged conduct of the administrator Caroline Njeri Wakonyo in that regard.***
- b) The fact that the co-administrator NKW is only 18 years old.***
- c) The beneficiaries AWK is still a minor.***
- d) The mode of distribution proposed which appears skewed in favour of the administrators.***
- e) The reasons given for the above; namely, that the properties at times 11 to 14 will be disposed off to facilitate the administration and for upkeep and education of NKW and A.***
- f) The obligation under article 53(2) of the Constitution and Section 41 of the Law of Succession Act especially where the interest of minor children are involved.***

Pursuant to the foregoing in the interest of justice, and out of abundance of caution, in order to secure the interests of the minor child in the assets of the estate, particularly those in items 11 to 15 court hereby varies the orders of 28th October, 2020 as follows:-

- a) The confirmed grant will issue in the joint names of the children of the deceased Caroline Njeri Wakonyo, NKW AND one maternal uncle namely Anthony Kamau Wanyoike.***
- b) The assets listed in the proposed schedule of distribution at items 11 to 15 will be shared equally by the three beneficiaries herein, namely Caroline Njeri Wakonyo, NKW and AWK. The shares due to AWK therein to be held in trust for him by the three administrators.***
- c) Leave is hereby granted to the administrators. Court in the event of specific need to dispose any of the assets at items 11 to 15 for the purposes of their upkeep, education or for the administration of the estate.***
- d) All other shares due to the minor AWK at item 3, 8, 9 and 10 of the schedule of distributions to be held in trust for him by the three administrators.***
- e) Distribution of asserts listed at items 1,2,4,5,6,7, & 16 of the proposed remains as per the schedule.***

C. MEOLI,

JUDGE

29.10.2020"

16. Justice Meoli made it abundantly clear, in the above proceedings, why it was necessary to review the previous orders of 28th October, 2020 confirming the grant. The overall reason was the need to protect the interests of the minor child, A. Caroline, from what is stated in this Ruling and as seen in the reproduced proceedings of 29th October, 2020 has proved she has not acted in the best interests of her siblings, and this was from the beginning of her petitioning for Grant of Letters of Administration. It is clear to me, having considered the entirety of

this matter that Caroline cannot be allowed to have her own way in the administration of this estate. Her actions have shown she cannot be trusted.

17. What then should the court do to the application before it? Having considered this matter, I am not satisfied that the drawn plan of the proposed subdivision of L.R. xxxx/xx – Kikuyu, to which the orders of distribution of the estate made on 29th October, 2020 were based, was made by a surveyor. I doubt it. That map does not show which surveyor, if at all, drew it. It may well have been drawn by unqualified person and will therefore not give effect to any distribution of the estate. It is therefore necessary for this to be rectified.

18. There is no basis that I can find to set aside the order of 29th October, 2020, as sought by the application dated 10th November, 2020. The basis upon which that application was made was in my view for selfish reasons on Caroline’s part. I will however reserve the right to alter the distribution of the estate once the property is surveyed and mutation plan is presented to this Court. The orders therefore, that I will issue by this ruling will bear in mind that the distribution of the estate may subsequently be altered by this Court to ensure equitable distribution of the estate.

DISPOSITION

19. In view of my findings above, I make the following orders:-

(a) The grant issued on 21st July, 2020 hereof, is hereby revoked and an order if herby made for a grant to be issued in the following names:-

(i) **Caroline Njeri Wakonyo** – ID NO. [....]

(ii) **NKW alias NWW** – ID NO. [....].

(iii) **Anthony Kamau Wanyoike**.

(iv) **George Gathuma Wanyoike**.

(b) before final distribution is made by this court a mutation plan showing the sub-division of property **L.R. No.xxxx/xx Kikuyu** shall be presented to this Court, which mutation plan shall be drawn by a surveyor licensed by the Land Surveyors Board established under the Survey Act Cap. 299.

(c) The **Deputy Registrar** of this Court shall present this Court Order to the **Kiambu Land Registrar** for noting under the title L.R. NO. xxxx/xx Kikuyu.

Orders accordingly.

RULING DATED AND DELIVERED AT KIAMBU THIS 19TH DAY OF APRIL, 2021.

MARY KASANGO

JUDGE

Coram:

C/A : Kevin

For the

Applicants..... Ms. Nderitu

For the Respondent..... N/A

COURT

Ruling delivered virtually.

MARY KASANGO

JUDGE