



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAKURU**

**SUCCESSION CAUSE NUMBER 47 OF 2018**

**ESTATE OF GEOFFREY KIMANI MUGO ALSO KNOWN AS GEOFFREY K. MUGO**

**TERESIA NJERI KIMANI.....PETITIONER**

**RULING**

1. Geoffrey Kimani Mugo also known as Geoffrey K. Mugo died on 8<sup>th</sup> May 2018.
2. According to the letter from the Chief Rurii Location dated 11<sup>th</sup> June 2018 and filed together with this petitioner, he was survived by -
  - (1) Teresia Njeri Kimani
  - (2) Jerad Mugo Kimani
  - (3) Susan Wanjiru Kimani
  - (4) Catherine Wangui Kimani
  - (5) Dixon Muriithi Kimani
  - (6) Elizabeth Njoki Kimani
  - (7) Agnes Wangari Kimani
  - (8) Humphrey Njoroge Kimani
3. These names are reproduced in the form P&A5 filed on 21<sup>st</sup> November 2018.
4. The estate of the deceased constituted one property, **Bahati/Kabatini Block 1/2805** valued at Kshs. 30 Million, as indicated in the same form P&A5.
5. On 7<sup>th</sup> July 2019 Teresia Njeri Kimani, the widow, and mother to all the other beneficiaries was issued with grant of letters of administration intestate in respect of her deceased husband's estate.
6. On 29<sup>th</sup> August 2018, her two children, Catherine Wangui Kimani and Gerald Mugo Kimani filed summons for Revocation of grant dated 27<sup>th</sup> August 2018.
7. Their main complaint was that the petitioner had obtained the same by making false statements and in particular concealing from the court material information.
8. That she never informed or consulted them when filing for the same and that the consent she filed in court was not signed by all the beneficiaries.
9. That by obtaining the grant and naming herself as the sole administrator the petitioner had acted selfishly as though they had no rights or stake in the estate.

10. In response the petitioner swore an affidavit on 2<sup>nd</sup> October 2019. She deponed that she had filed the petition as the legal wife of the deceased and the two(2) applicants were two (2) out of her other children, all of whom she had named as beneficiaries to the estate. That she had been advised by her counsel that the under provision of **Section 66 & 76(d) (ii) of the Law of Succession Act; Rule 77 of the P & A rules** she did not require the consent of her children to institute this cause; as she held the position of priority which supersedes that of the applicants. More importantly that the applicants had not demonstrated the material information they were accusing her of failing to disclose. In any event, she had not undertaken any activities that were contrary to the requirements of the law with regard to the duties and responsibilities of an administrator

11. On 5th September 2019, the petitioner filed summons under **Section 45, 46 47 of the Law of Succession and Rule 63 of the P&A Act**, rules in which she joined John Ng'ang'a as the 1<sup>st</sup> respondent and her two children Catherine Wangui Kimani and Gerald Mugo Kimani as the 2<sup>nd</sup> and 3<sup>rd</sup> respondents.

12. In that Summons she sought orders *inter alia*:

***That pending the hearing and determination of this cause, the 1<sup>st</sup> respondent be ordered directed to permanently refrain/be restrained from remaining in occupation of the premises upon land parcel no Bahati Kabatini Block 1/2805 and the 2<sup>nd</sup> and 3<sup>rd</sup> Respondent to surrender to her motor vehicle registration KBQ 454 Station Wagon.***

13. In her Supporting Affidavit sworn on 30<sup>th</sup> August 2019 she set out the reasons for the application. First, as the administrator, she bears the legal duty to gather the estate of the deceased, and protect it from wastage pending he distribution of the same.

14. That the 1<sup>st</sup> respondent was involved and illegally occupied the property named herein and was running a church therein to the detriment of the applicant.

15. That the 2<sup>nd</sup> & 3<sup>rd</sup> respondents had carted away and were using to their benefit the named motor vehicle which was part of the deceased estate, she produced a copy records to confirm ownership.

16. Parties took directions that the petitioner's application and the Summons for Revocation of Grant of 27<sup>th</sup> August 2019 be heard together, and that the Summons for Revocation of Grant be treated as the response to the petitioners summons.

17. Parties proceeded by way *viva voce* evidence.

18. In her testimony the petitioner reiterated what was in her affidavits confirming that the 2<sup>nd</sup>, 3<sup>rd</sup> respondents were her children.

19. That when her husband died the two rented the school that was in the property to the 1<sup>st</sup> Respondent without consulting her. They did not give her the rent. They also took away the motor vehicle. It was her position that the 1<sup>st</sup> respondent should leave the premises, and the other respondents to handover the motor vehicle to her.

20. On cross examination it turned out that prior to the death of her husband there were problems between her and her husband and she had left the matrimonial home to live with one of her daughters named as Agnes home who was said to be in Britain. This Agnes had purchased land adjacent to her parents' home and constructed a house. That is where the petitioner was living.

21. She testified further that during her husband's funeral the children ganged up against her telling her that she had nothing in that home. That there was hostility from them and hence her inability to consult them. She stated that their fear that she would throw them out of the estate was unfounded.

22. That the 3<sup>rd</sup> respondent lived at the matrimonial home.

23. Regarding the motor vehicle she conceded that it was not in her form P & A5 but it belonged to her husband, and the estate.

24. That she told four of her children who are abroad about the cause. That the 3<sup>rd</sup> respondent had no ill will against her but that the 2<sup>nd</sup> and 3<sup>rd</sup> respondents are the ones who were insulting her.

25. That even though she separated from her husband, when he fell ill she took care of him.

26. She testified that the 1<sup>st</sup> respondent had occupied the premises upon the death of her husband. That she never met him but saw the sign board for his church at the gate of the property.

27. The 2<sup>nd</sup> respondent testified that she was the 2nd born daughter of the deceased and the petitioner. She testified that her mother had left in 2010 and when her father died her mother was not at home. That her father lived at KITI but ran a school on the Kabatini property. That it was the 3<sup>rd</sup> respondent who took care of their father when he fell sick and her sister Agnes rented their mother a house and later built her own, where their mother lived even at the time of the demise of their father.

28. That their father requested to be buried at Nakuru West Cemetery and that is where they buried him.

29. That the petitioner would attend the funeral meetings and return their sister's house which is adjacent to their father's home.
30. She testified that after the burial their mother summoned them to the chief's office where she demanded that they surrender all of the documents to their father's property. However their lawyer wrote to the chief restraining him from intermeddling with the estate.
31. Thereafter she called her, and her brother Gerald to the advocate's office where they had a discussion and agreed that since Catherine was in possession of the burial permit she should obtain the certificate of death of their father so as to set off the process. She learnt later that her mother had obtained the certificate of death and filed the cause, and that the grant was already out. In her own words she said that they felt that the grant was not in their favour. That her mother told her that since she was married she would get nothing.
32. That she and her brother decided to object because they had the fear of being disinherited, and her mother had even tried to evict her brother three (3) times from home.
33. About the motor vehicle, that Gerald had been having it even before their father died and he was taking care of it.
34. That their father closed the school in 2017. That they leased the school building so as to take care of the maintenance costs, water, electricity, and land rates.
35. On cross examination she testified that she was married and her matrimonial home was about one kilometer away from her family house that the motor vehicle was in her father's name but in Gerald's possession. She said that except for herself and Gerald, who were in Kenya, the other siblings (4) were in Britain; that their lawyer was Mr. Bichange but they had discontinued his services due to poor advice.
36. She said she did not know the person Ng'ang'a (the 1<sup>st</sup> respondent) to whom the building had been leased/rented. She said it was Mugo (Gerald) who knew how much the rent was. She said her other siblings, were also in objection but they had not filed any papers in court. She wanted the grant revoked so that she and her siblings, would agree on who would be the administrator, she said that Gerald was the one taking care of the Estate and had not wasted it.
37. Parties filed written submissions through their respective advocates. By 15<sup>th</sup> February 2021, the petitioner had filed submissions through the firm of Mogaka & Company but there were none on record for the applicants. They were given a further mention date to file but as at the time was brought to me to write this ruling none had been filed.
- 38. The issues for determination are *whether the Summons for Revocation of the Grant meets the threshold set out under Section 76 of the Law of Succession Act, and whether the prayers sought by the petitioner are tenable.***
39. It was argued for the petitioner that as the widow to her children she was in priority to obtain letters of administration and did not require even the counsel in authority of her children to file the cause.
40. The petitioner relied on **Musa –vs- Musa [2002] EA 182** where it was held that by nature of **Section 66 of the Laws of Succession Act** the widow of the deceased did not require the consent of any other person under **Rule 7(7) (b) of the P&A Rules** as no other person was entitled to apply for the grant in priority to her. The court stated;

***“...the permission to obtain consent of any other beneficiary to the estate was not a defect of substance or indeed even form.”***

41. It was also argued that the administrator had not concealed anything from the court that was so material to warrant the revocation of the grant, in any event she was entitled to the household and personal effects of her deceased husband.
42. It was also argued that the administrator was mandated by **Section 82 and 83 of the Laws of Succession Act** to collect and secure all the free property of the deceased for purposes of administration of the estate.
43. I have taken into consideration all the evidence before me both oral, affidavit together with the submissions and authorities cited. **Section 66 of the Law of Succession Act** states:

***“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;***
- (c) the Public Trustee; and***
- (d) creditors;***

***Provided that, where there is partial intestacy, letters of administration in respect of the intestate estate shall be granted to any executor or executors who prove the will.***

44. Rule 7(7)(b) of the P&A Rules states:

*“(7) Where a person who is not a person in the order of preference set out in section 66 of the Act seeks a grant of administration intestate he shall before the making of the grant furnish to the court such information as the court may require to enable it to exercise its discretion under that section and shall also satisfy the court that every person having a prior preference to a grant by virtue of that section has—*

*(a) .... or*

*(b) consented in writing to the making of the grant to the applicant; or*

*(c) ...”*

45. It is clear from these provisions that the Petitioner as the surviving spouse of the deceased does not require the consents of the other beneficiaries to the estate. This is emphasised by **Rule 7(7)(b)** which makes it mandatory for the person NOT in the preference list to obtain the consent of those having prior preference. It is the applicants who would be required to obtain the consent of their mother if they were to file this cause, and not the other way round. From the evidence given by Catherine, she has a bone to pick with her mother because when her father died her mother was not living at home, in the matrimonial home. It would appear that this is the basis of their hostility towards their mother.

46. The Petitioner never left to go elsewhere. She lived in a home adjacent to her matrimonial home. Her daughter with the deceased, at first rented a house for her and later built a house where her mother could live. Whatever matrimonial dispute that existed between the Petitioner and her husband is of little consequence as regards the Grant of Letters of Administration Intestate. She is the surviving spouse of the deceased. Catherine and her brother did not dispute that when her husband fell sick she took care of him. Whether she spent the night in the home during the funeral arrangements is again inconsequential.

47. Catherine lives in her own matrimonial home. The person who lives in the family home is the 3<sup>rd</sup> respondent/2<sup>nd</sup> applicant but he never testified. He did not testify to confirm or deny the allegations by Catherine that their mother had tried to evict him from the home several times. The petitioner confirmed that when she went to the home the 3<sup>rd</sup> respondent /2<sup>nd</sup> applicant did not deny her access to her home.

48. This thing of children equating themselves to their mother when their father dies, and imagining that they can just run roughshod on her must stop. The law recognises her position as a mother and the spouse of her husband though dead. That she and her husband worked together (unless otherwise proven) to create the wealth or acquire the property that is now the estate of the deceased. That position unless abused, is protected by law, and must be respected.

49. The law equally protects the beneficiaries and their shares in the estate. They should await the process and give the necessary support so as to expedite the process. In this case the petitioner named all of her children in the form P & A 5, a clear indication that any fears of disinheritance are unfounded.

50. The Petitioner did no wrong in filing the cause because as demonstrated herein above she did not require their consent or authority. That would be the ideal situation, where the whole family sits together and agrees on the way forward. But in this case, the hostility, especially from the 2<sup>nd</sup> respondent/1<sup>st</sup> applicant is evident, that could not have happened.

51. The applicants rely on **Section 76 (b)** of the **Law of Succession Act** which states:

*“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) .....*

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

*(c) .....*

*(d).....*

*(e) .....*”

52. The petitioner was within her rights, and she concealed nothing from the court.

53. Hence the prayer for revocation of the grant is not merited and is denied.

54. With regard to the prayer for the eviction of the 1<sup>st</sup> respondent from the premises of the school, first there was no documentary evidence that he was in occupation of the premises, however Catherine testified that her brother the 2<sup>nd</sup> respondent is the one who had leased the property to the 1<sup>st</sup> respondent. Neither the 1<sup>st</sup> respondent nor the 3<sup>rd</sup> respondent testified. They did not respond to the summons.

55. Catherine's testimony that rent was collected from the 1<sup>st</sup> respondent and applied for the maintenance of the premises was not supported with any evidence. She did not know how much was received, how much was spent on the premises, she had no details.

56. Clearly the 2<sup>nd</sup> respondent, even if he did what was alleged, he is now bound to answer to the administrator of the estate, whose legal duty it is to take care of the estate pending distribution. If he does not think so, then his 'tenant' has no choice but to either become accountable to the administrator or leave the premises.

57. With regard to the release of the motor vehicle to the petitioner to have it parked outside place of abode, this sounds unreasonable. Parking the motor vehicle pending the determination of the cause could easily lead to wastage. It has been stated that the 3<sup>rd</sup> respondent has been in possession of the same even before the demise of the deceased herein and has been using and maintaining the same. My considered view is that the same should remain in the possession of the 3<sup>rd</sup> respondent to hold and maintain on behalf of the estate and he will be held accountable at distribution. The same could be valued at this early stage so that its value is known.

58. Hence the orders that abide in this matter are that:

**a. The Summons for Revocation of the Grant is not merited and is dismissed.**

**b. The 1<sup>st</sup> respondent, if he is still in possession of the premises, has 30 days from the date hereof to either vacate the premises in Bahati/Kabatini Block 1/2805 or enter into negotiations with the administrator on the terms of occupation. The administrator has the discretion to determine what is in the best interests of the estate.**

**c. Within sixty (60) days hereof the petitioner to file and serve Summons for Confirmation of the Grant**

**DATED AND DELIVERED EMAIL THIS 31ST MAY OF 2021.**

**MUMBUA T. MATHEKA**

**JUDGE**

Court Assistant: Edna

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