



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYERI

SUCCESSION CAUSE NO. 129 OF 1987

IN THE MATTER OF THE ESTATE OF ELIJAH MWANGI MURIITHI

alias MWANGI NJOROGE (DECEASED)

ANNE SEREYA NKOYO.....APPLICANT

VERSUS

ELIZABETH WANGARI MWANGI..... 1STRESPONDENT

MARY WAMBUI

NDUNG’U.....2NDRESPONDENT/INTERESTED PARTY

NJOGUINI WATUKA

WOMEN GROUP.....3RD RESPONDENT/INTERESTED PARTY

RULING

Brief facts

1. This application dated 8th January 2021 brought under **section 47 of the Law of Succession Act and Rules 49, 59 and 73 of the Probate and Administration Rules** seeks for orders of an injunction restraining the respondents by themselves, their agents, servants or employees from alienating, sub-dividing, transferring, transmitting or otherwise interfering in any way with L.R Nos. NYERI/WATUKA/2508, 2509 and 2510 thereof until hearing and determination of the main suit. The applicant further seeks for orders that an inhibition/caveat or prohibition be issued on L.R. Nos. NYERI/WATUKA/2508, 2509 and 2510.

2. The applicant states that she is the widow of one Stanley Macharia Mwangi(now deceased) who is the late son of the deceased in this case Elijah Mwangi Muriithi.

3. In opposition to the application, the 1st respondent filed a replying affidavit sworn 11th March 2021 while the 2nd and 3rd respondents did not file any responses.

The Applicant’s case

4. It is the applicant’s case that her husband died after the deceased in this cause. She claims on behalf of her late husband’s estate the share that he was entitled to. She further states that she has two children namely Gladwell Terrian Nkoyo and Vivian Wangari Mwangi.

5. The applicant states that the 1st respondent was granted letters of administration herein on 25/8/1988 and the same was confirmed on 5/4/1989. The 1st respondent subsequently after distributed the said estate without consulting the applicant’s husband which distribution was contrary to the law of succession and to Kikuyu Customary law to which both men were adherent to.

6. The applicant further states that her children and herself are the rightful beneficiaries of her late husband’s share in his late father’s estate and that the 1st respondent never sought consent of the beneficiaries and heirs of the deceased through the applicant’s husband.

7. The applicant contends that the 1st respondent has distributed the estate namely L.R. No. NYERI/WATUKA/612 upon sub-division and giving shares to her relatives as well as third parties.

8. The applicant prays that the grant herein be revoked and that the suit properties be preserved by orders for injunction to avoid wastage or alienation.

The 1st Respondent's Case

9. The respondent is the widow of the deceased and they were blessed with three children namely; Joseph Ndung'u Mwangi, Stanley Macharia Mwangi and Jennifer Wanjiku Mwangi. On 5/4/1989, she was appointed as the administrator of the deceased's estate and the grant was confirmed.

10. The respondent contends that the deceased bought land parcel number NYERI/WATUKA/612 through settlement Fund Trustees which was in form of a loan. She further adds that she had to pay the outstanding loan before the said land could be transferred to her.

11. The 1st respondent further contends that she was issued with a certificate of confirmation of grant when her late son Stanley Macharia Mwangi was a student and had no family of his own. As such the estate of her late husband was rightfully transmitted to her absolutely as she ranks higher in the list of beneficiaries as compared to her children.

12. The 1st respondent states that after the suit property was registered in her name, she sub divided it into three portions and distributed them as follows:-

- a) L.R. No. NYERI/WATUKA/2508 - Mary Wambui Ndung'u the 2nd respondent who is also her daughter in law as a gift inter vivos;
- b) L.R. No. NYERI/WATUKA/2509 - Njoguini Watuka Women Group
- c) L.R. No. NYERI/WATUKA/2510 –Herself Esther Wangari Mwangi.

13. The 1st respondent states that she gifted the 2nd respondent with a share of the land because she was taking care of her, catering for her medical expenses and taking her to hospital since she got married to her son.

14. The 1st respondent further states that she sold L.R. No. NYERI/WATUKA/2509 to the 3rd respondent to raise money for legal fees for a suit between the 1st respondent and the applicant. The 1st respondent further adds that she is willing to transfer her share in the estate L.R. No. NYERI/WATUKA/2510 to the applicant. She states that she only came to know of the applicant after her son died which is the year 2004.

15. The applicant thereafter filed a Further Affidavit dated 31st March 2021 in which she deposes that the 1st respondent was not entitled to inherit the suit properties absolutely but to hold it in trust for her male children which includes the applicant's husband. As such the 1st respondent cannot rank higher than her male children under Kikuyu Customary law.

16. The applicant further states that the land the 1st respondent is preparing to transfer to her is only 1.01Ha out of the entire estate that measures 4.438Ha. This means that the applicant believes that she is entitled to a bigger share of the land that has already been distributed.

17. The applicant further contends that the 1st respondent is deponing to falsehoods as she knew the applicant existed even before the applicant's husband died. The 1st respondent in a bid to disinherit the applicant told the court that her son was not married. The applicant further believes that the manner in which the 1st respondent obtained the grant and later in 2010 distributed the estate was illegal and discriminatory.

18. Parties agreed to rely on their affidavits in disposal of this application.

19. The applicant has filed this application in her capacity as the widow of the son of the deceased herein one Stanley Macharia Mwangi who was a heir to the estate. The 1st respondent states that she obtained the certificate of confirmation of grant when her late son was in primary school and was not married.

20. In form P& A5, the said Stanley Macharia was named as a beneficiary of the deceased's estate alongside the 1st respondent and another son of the deceased one Joseph Ndungu. The applicant did not attach a copy of death certificate of her late husband but she states that he died after the deceased and that by virtue of her deceased husband being a beneficiary of the estate, the applicant is claiming a share. The 1st respondent offered to give the applicant 0.10ha of the land which 1st respondent says is her portion. The applicant states that the offer is not acceptable.

21. Before the court is an application seeking for orders for injunction and inhibition. I have perused the record and noted that the applicant has not filed an application for revocation of grant. Had she done so, it would be in order to apply for orders for preservation of the estate pending the determination of the said application. All that the applicant states in her affidavit is that the grant should be revoked and the estate redistributed without any application to form a basis for the said averments.

22. The orders for injunction and inhibition are orders purposed to preserve suit land in a civil suit or the estate of a deceased person pending disposal of succession proceedings.

23. It is my considered view that in the absence of an application for revocation of grant, the orders sought would be in vain in that there

would be nothing pending after granting of the orders in this cause.

24. The 1st respondent filed this cause following the death of her husband who died on 06/01/1980. The grant was confirmed on 05/04/1989 about 32 years ago. Notwithstanding the fact that a grant may be revoked any time due to the reason that there is no time limit under the law, the applicant herein has taken ages to take action in this case. In her affidavit, the applicant does not say when she came to know of the existence of this cause which I believe is important information herein.

25. Taking into consideration the foregoing, I am of the considered opinion that the application dated 08/01/2021 lacks foundation, is misconceived and is incompetent.

26. Consequently, this application is hereby struck out with no order as to costs.

27. It is hereby so ordered.

DELIVERED, DATED AND SIGNED AT NYERI THIS 20TH DAY OF MAY, 2021.

F. MUCHEMI

JUDGE

Ruling delivered through video link this 20th day of May 2021