



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

FAMILY DIVISION

SUCCESSION CAUSE NO. 1130 OF 2018

IN THE MATTER OF THE ESTATE OF CARMELINA NGAMI MBURU - DECEASED

CATHERINE NJERI NGANGA.....PETITIONER

VERSUS

LOUISA WANJIRA MBURU.....1ST OBJECTOR

LEWIS WANYOIKE KANGETHE.....2ND OBJECTOR

JOSEPH KANGETHE WANYOIKE.....3RD OBJECTOR

RULING

1. The deceased Carmelina Ngami Mburu died intestate on 24th October 2017. She did not have children. There is a parcel of land LR No. 3586/3, IR No. 37285 (Original No. 3586/2/3) measuring about 54.39 Hectares situated in Karen in Nairobi that the deceased claimed belonged to her late husband Godhard Ichahuria Mburu, but was registered in the name of Muchange Investment Ltd. The parcel is the subject of Nairobi **Environment and Land Court No. 1180 of 2014** in which the company has sued several parties claiming that the parcel had been fraudulently taken away and illegally registered and transferred in the names of Habenga Holdings Limited, Jina Enterprises Limited, and Telesource Company United at different times, the fraud being perpetrated through the Government of Kenya through the Ministry of Lands and Housing.

2. When the deceased was alive, she had given Power of Attorney to Catherine Njeri Nganga (the petitioner) to, among other things, look and search after the properties of her late husband Godhard Ichahuria Mburu. The property included the above parcel.

3. Using the Power of Attorney, the petitioner came before this court to petition for grant of letters of administration *ad litem* to enable her participate in the Environment and Land Court suit over the parcel. She obtained the grant.

4. The 2nd and 3rd objectors Lewis Wanyoike Kangethe and Joseph Kangethe Wanyoike filed summons dated 9th March 2021 to state that the deceased had on 26th January 2017 executed a written Will with the two as executors with powers to manage and handle all her affairs, including property, and to prosecute and/or defend any claims and actions relating to her estate. Their case was that the petitioner failed to disclose that the deceased had left the Will with them as executors, and proceeded to fraudulently obtain the limited grant. They stated that the petitioner had no legal basis to participate in the Environment and Land Court cause on behalf of the deceased. They further stated that they had petitioned for grant of probate in **P & A No. 1493 of 2018**. They wanted the grant issued to the petitioner to be revoked.

5. There was an earlier application dated 12th October 2020 by Louisa Wanjira Mburu (1st objector) who also sought the revocation of the grant to the petitioner. Her case was that the grant was obtained secretly without reference to any family member; that the alleged Power of Attorney lapsed when the deceased died, and should not therefore have been used to support the grant. The objectors generally claimed that the petitioner was not the deceased's family member; that if the petitioner and the deceased were known to each other, that was a love and affection relationship that did not entitle the petitioner to a grant. Lastly, that if the petitioner were to be allowed to continue using the limited grant to participate in the Environment and Land Court cause that would ultimately compromise the rights of the ultimate beneficiaries. The petitioner insisted that she had a legitimate grant.

6. The respective counsel filed written submissions which I have read and considered.

7. Ultimately, the court will be called upon to determine who the beneficiaries of the estate of the deceased are, and who will be granted letters to administer the estate of the deceased. The court will determine whether the deceased died testate or intestate. The journey towards the resolution of those issues has begun, because the 2nd and 3rd objectors have produced a written Will in **P & A 1493 of 2018** seeking to be granted probate. The petitioner and the 1st objector are at liberty to join the cause and make each her claim. Any party challenging the validity of the said Will will be heard in those proceedings.

8. I have read the Power of Attorney that the petitioner presented to court on basis of which she got the limited grant. I accept the position that the petitioner had the donated powers during the lifetime of the deceased. The Power of Attorney did not say that it was irrevocable, and neither is there any evidence that it was given for any consideration, valuable or not. On the basis of **CCB –v- MIB & Another [2014] eKLR** and **Re Estate of Wilfred Chege Muthemba (Deceased) [2017]eKLR**, I determine that the Power of Attorney donated to the petitioner was an ordinary power of attorney that was revocable, and automatically terminated upon the death of the deceased. After the deceased died, it was upon the person with a grant of probate or an intestate grant to pursue any claims or defend any claims in respect of her estate.

9. That being the position, the petitioner ought not have used the Power of Attorney to obtain the limited grant. It follows that the proceedings leading to the limited grant were defective in substance, and under **section 76** of the **Law of Succession Act** the grant ought to be revoked.

10. These findings are sufficient to resolve the applications dated 9th March 2021 and 12th October 2020. The limited grant issued to the petitioner Catherine Njeri Nganga on 15th January 2019 is hereby revoked. Costs of each application shall be borne by the petitioner.

DATED AND DELIVERED AT NAIROBI THIS 25TH DAY OF OCTOBER 2021.

A.O. MUCHELULE

JUDGE