



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

SUCCESSION CAUSE NO. 16 OF 2017

IN THE MATTER OF THE ESTATE OF M'MURUNGI M'MBWIRIA Alias M'MURUNGI MBIRIA (DECEASED)

JULIA MUKOMUTHAMIA M'RUKARIA.....PETITIONER/RESPONDENT

VERSUS

HENRY M'IKIARA.....1ST PROTESTER/RESPONDENT

ESTHER KARWITHA.....OBJECTOR/APPLICANT

RULING

1. M'Murungi M'Mbwiria (the deceased) died on 21st October 1977. On 5th December 2017, the Petitioner, Julia Mukomuthamia M'Rukaria was appointed the administrator of the estate of the deceased and on 21st February 2019, Mabeya J confirmed the grant under which the Petitioner and the 1st Protestor were allocated 0.244 Ha and 0.4 Ha respectively, of parcel L.R No. Ntuma/Ntakira/341.

The Applicant's Case

2. By way of summons dated 18th June 2021, Esther Karwitha, the Applicant seeks revocation of the grant issued on 21st February 2019. She claims to have been left out and yet she is a daughter and a beneficiary of the deceased and that the respondents have already instructed the surveyor to subdivide the parcel of land. Her application is supported by her supporting affidavit sworn on 18th June 2021.

The Petitioner's/Respondent's Case

3. The Petitioner/Respondent, opposed the application by her replying affidavit sworn on 29th July 2021. She urges that the succession cause was done with full knowledge of all the beneficiaries including the Applicant herein. That she filed a citation, Misc. Cause No. HC 55 of 2013 against Henry M'Ikiara and the Applicant (Esther Karwitha) to accept or refuse letters of administration and that they responded to the same. That it was directed that they jointly take up letters of administration and they agreed that the Applicant and Henry M'Ikiara would first execute the documents and then hand them over to the Petitioner's advocate for filing but they failed to do so. That she, the Petitioner, reminded the Applicant and Henry to prepare the Petition and have all relevant documents executed but this was not done and they refused to co-operate, thus prompting her advocate to prepare the petition for letters of administration for the parties to execute. That the petition for letters of administration was forwarded but the Applicant declined to execute them. That this made her go back to court and the court allowed her to file the petition for letters of administration without the Applicant, Esther Karwitha, and Henry M'Ikiara executing the petition. That the matter was gazetted but the applicant did not object and she was issued with the grant of letters of administration. That the summons for confirmation of grant, supporting affidavit, consent to confirmation and a hearing notice were served upon the Applicant (Esther Karwitha) and Henry M'Ikiara and that on 19th September 2018, the daughters of the deceased appeared in court and informed the court that they never wished to get any share from the estate save for the Petitioner who was living on the estate. That consequently, the estate was distributed between the Petitioner and Henry M'ikiara. That it is thus very clear that the Applicant was fully aware of the succession cause but chose not to participate since she was not interested. That there was disclosure of all material facts in accordance with the provisions of Section 76 of the Law of Succession, and therefore, the issue of revocation does not arise.

4. The Petitioner also filed submissions dated 27th September 2021. She urges that the threshold for revocation of grant under Section 76 of the Law of Succession Act has not been met. She urges that the documents filed in court show that the Applicant was properly kept abreast and chose to ignore the proceedings. That every effort was made to ensure that all parties were informed of the proceedings, executed all documents required, and were present in court. That on the 19th September, 2018 the daughters of the deceased appeared in court and they informed the court that they never wished to get any share from the estate save for the petitioner who was living on the estate and consequently, the estate was distributed between the petitioner and the protestor. She relies on the case of *Re estate of Stephen Kurgat Kimwei-Deceased* [2017] eKLR.

Determination

5. The main issue arising for determination is whether or not to revoke the certificate of confirmation of grant issued on 21st February 2019. The Court has confirmed from the grant that the Petitioner and the 1st Protestor/Respondent were the only beneficiaries in the instant succession cause.

6. The Applicant claims that she is a daughter of the deceased and is entitled to a share of the deceased's estate. In response, the Petitioner claims that the succession cause proceeded with the Applicant's full knowledge who deliberately failed to participate and register her interests in the estate, despite numerous reminders and services.

7. It is not disputed that the Applicant is a daughter of the deceased. The Court considers that a daughter falls within the meaning of a dependant under Section 29 of the Law of Succession Act. The Applicant did not respond to the issue of her indolence and non-cooperation as raised by the Petitioner. The Court agrees with the Petitioner that there was no material nondisclosure of material facts. Nonetheless, this Court finds that the interests of justice require the Court to allow the Applicant to benefit from her deceased's father estate as she indeed qualifies as a beneficiary.

8. Notably, whilst the Petitioner urges that the deceased's daughters appeared in Court and indicated that they were not interested in the estate, she does not categorically state that the Applicant appeared in Court. This Court, therefore, considers that at the point of confirmation of grant, the Applicant was not in Court. This Court, therefore, finds that it is in the best interests of justice to allow the Applicant to benefit from the estate of the deceased.

9. In the distribution of the property, the Court (Mabeya J) previously found that he would have distributed the property equally were it not for the Petitioner who insisted that she wished for her brother to get a bigger share. This Court however considers that there is now another beneficiary, and it would thus be best to have the property distributed equally.

ORDERS

10. Accordingly, for the reasons set out above, this Court makes the following orders: -

i) The certificate of confirmation of grant dated 21st February 2020 is revoked.

ii) The mode of distribution of the deceased's estate will be as follows: -

L.R No. Ntima/Ntakira/341

Julia Mukomuthamia M'Rukaria

Henry M'Ikiara To share equally

Esther Karwitha

iii) There shall be no order as to costs.

Order accordingly.

DATED AND DELIVERED THIS 18TH DAY OF NOVEMBER 2021.

EDWARD M. MURIITHI

JUDGE

Appearances

M/S G. M. WANJOHI MUTUMA & CO. ADVOCATES FOR THE APPELLANT

KEVIN OUMA & CO. ADVOCATES FOR THE PETITIONER/RESPONDENT