



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KIAMBU

SUCCESSION CASE NO. 51 OF 2016

IN THE MATTER OF THE ESTATE OF MUTISYA MATEE (DECEASED)

MBOVI WAMBUA1ST APPLICANT

MARY WANJERI.....2ND APPLICANT

MIRIAM WANJERI.....3RD APPLICANT

VERSUS

JANE WAMUHU MUNYAO.....1ST RESPONDENT

ESTHER MUNEE MUNYAO.....2ND RESPONDENT

RULING

1. Before me is Summons for Revocation of Grant filed on 19th March, 2014 and brought under Section 76(a) (b) and (c) of the Law of Succession Act and Rule 44 and 73 of the Probate and Administration Rules. The Applicants sought for an order that the Grant of Letters of Administration intestate made to **JANE WAMUHU MUNYAO** and **ESTHER MUNEE MUNYAO** in Thika Succession Cause No. 512 of 2012 on 14th February, 2013 and subsequently confirmed on 18th October, 2013 be revoked and/or annulled.

2. The Application is based on grounds that the grant was obtained by making false and fraudulent claims by the Petitioners/ grant holders who are not related to the deceased and the exclusion of persons beneficially entitled, that is the Applicants herein. **MBOVI WAMBUA** swore the supporting affidavit on her own behalf and on behalf of her Co-Applicants. She deposed that though the Applicants had been included as beneficiaries in the chief's introduction letter, they were not involved in the succession cause. And yet, the deponent is the only living relative of the deceased and was in occupation of deceased's land parcel number **KAKUZI/GITUAMBA/BLOCK II/281**.

3. The Respondents filed their joint replying affidavit on 19th September, 2014. They contended that there was no fraud, misrepresentation or concealment of facts in the petition for grant. It was asserted that the deceased is the registered owner of all that parcel of land known as **KAKUZI/GITUAMBA/BLOCK II/281** where one brother of the deceased, Mutua Matee was allowed to settle by his two other brothers with whom he had jointly acquired the parcel of land.

4. The court directed that the application be disposed of by way of written submissions. None of the parties filed their submissions even after several requests. The court has considered the affidavit material filed in support of and in opposition to the application for revocation filed on 23rd January 2014. Parties did not file submissions despite being given an opportunity to do so, having earlier eschewed the opportunity to proceed by way of *viva voce* evidence.

5. From the scanty material before me, the deceased was unmarried and had no children in his life- time. He was survived by one brother Michael **Mutua Matee**, some sisters- in- law, including the 1st Applicant herein, and several nephews and nieces who include the administrators herein. He died possessed of one asset, namely **KAKUZI/GITUAMBA BLOCK II/281** measuring 1.182 ha which was jointly registered in his name and one **Grace Wanjiru Chege**.

6. Although not specifically stated in the 1st Applicant's affidavit, it appears from the Replying affidavit that the 1st Applicant's husband was one **Wambua Matee** (deceased). He was not party to the alleged joint acquisition of the suit land, by the brothers **Mutisya Matee** (deceased herein), **Munyao Matee** and **Mutua Matee**, which land was allegedly subsequently registered in the name of the deceased herein. Thus it appears that the administrators **Jane Wamuhu Munyao** and **Esther Munee Munyao** were the children of the deceased's brother

Munyao Matee (also deceased). These administrators together with their uncle **Michael Mutua Matee** jointly initiated the succession cause in respect of the deceased herein.

7. The foregoing surmise is consistent with the copy of decree annexed as **JWM1** to the Replying affidavit. It appears that the deceased herein had during his lifetime also sold some of the land to Margaret Kamuri Watau. Thus, the remaining share of the land was due to the children of **Munyao Matee** and the brother **Mutua Matee**, all who consented to the application to confirm the grant in the lower court.

8. On the other hand, the 1st Applicant was not a blood relative of the deceased herein but a sister-in-law. There is no requirement under Section 39(1) on Section 51(g) Law of Succession Act to include the names of the intestate's sisters-in-law or brothers-in-law as beneficiaries where the intestate is survived by a brother or sister as appears to be the case here. Similarly, under Section 66 of the Law of Succession Act and Rule 7(7) of the Probate and Administration Rules there is no requirement to obtain consent of the sister-in-law of an intestate where the deceased is survived by his own siblings or nephews and nieces.

9. The 1st Applicant appears to be a stranger to the estate herein and is far removed from the deceased who was survived by a brother, **Mutua Matee**, his nephews and nieces, the latter who include the administrators herein. The co-applicants, also cited in the 1st Applicant's affidavit, namely **Mary Wanjeri** and **Miriam Wanjeri** are not children of the 1st Applicant's deceased husband, and therefore nieces to the deceased. According to the chief's letter "**MWI**" dated 24th August 2010, they are alleged purchasers of the suit land from the 1st Applicant. It seems that a claim the said Applicant had raised in respect of the suit land had already been dismissed by virtue of the decree adopted before the SRM's Court in Thika on 18th January 2011. The 1st Applicant did not appeal that decision.

10. In the circumstances, I find no merit in the application to revoke the grant herein and will dismiss it with costs.

DELIVERED AND SIGNED AT KIAMBU THIS 5TH DAY OF MARCH 2020.

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C. MEOLI

JUDGE

In the presence of:

Applicants – No appearance

Respondents – No appearance

Court Assistant – Ndege/Nancy