



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT CHUKA**

**MISC. SUCCESSION CAUSE NO. 46 OF 2018**

**IN THE MATTER OF THE ESTATE OF THE LATE FREDRICK MARANGU RAGWA (DECEASED)**

**ROBERT MARANGU.....APPLICANT**

**VERSUS**

**NAZARENA KANUGU MARANGU.....PETITIONER/RESPONDENT**

**RULING**

1. This cause relates to the estate of the late Fredrick Marangu Ragwa (deceased) who died on 11<sup>th</sup> October 2014 at Chogoria Hospital but domiciled at Mugumango. The Petitioner the widow to the deceased and the Respondent herein was granted letters of administration on 11<sup>th</sup> July 2017. The same was confirmed on 1<sup>st</sup> August 2018.

2. In her petition for letters of administration vide ***Chuka Chief Magistrate's Succession Cause No.61 of 2017*** the petitioner listed the following as dependants surviving the deceased namely:

(i) Nazarana Kanugu Marangu - Widow

(ii) Denis Kimathi Marangu

(iii) Winfred Kagendo Marangu

(iv) Eric Michael Kariuki Marangu

(v) Frank Gitonga Marangu and

(vi) Evans Mwenda Marangu

3. Robert Kinyua Marangu, the Applicant herein vide Summons for Revocation of Grant dated 15<sup>th</sup> November 2018 has moved this court for revocation of the said grant on the following grounds namely:-

(i) ***That the proceedings to obtain the grant were defective in substance***

(ii) ***That the grant was obtained fraudulently by the making of a false statement or by concealment from the court of something material to the case.***

(iii) ***That the grant was obtained by means of an untrue allegations of a fact.***

4. The Applicant in his Supporting Affidavit sworn on 15<sup>th</sup> November 2018 has deposed that he is a son to deceased and that the Petitioner never disclosed that fact and despite having filed a caveat, the grant was confirmed without his knowledge.

5. He further claims that he had filed citations against the Respondent before she petitioned for letters of administration.

6. In his further affidavit sworn on 19<sup>th</sup> December 2018 the Applicant deposes that he lived with the deceased and acquired his identity card reflecting Marangu as his father. He faults the Petitioner for recognising his young brother Denis Kimathi Marangu while treating him as an outsider out of malice.

7. He further faults the Petitioner/Respondent for keeping him in the dark about the pendency of the succession cause in the lower court when she was aware about his stake on the estate of the deceased. He contends that there was concealment of material facts.
8. In his oral testimony in court the Applicant reiterated the contents of his affidavit adding that the Respondent was a step mother to him. He further informed this court that his mother was known as Laurencia Mbandi Kanuni. He denied under cross-examination a suggestion put to him that he applied for a birth certificate on 14<sup>th</sup> July 2017 to assist him in this application.
9. He faulted the Petitioner for recognizing his biological brother Dennis Kimathi Marangu while at the same time discriminating against him. He added that he attended school at Muringa Primary School and later at Kajambaka Primary School 1985 after the Petitioner allegedly turned hostile to him. He claims that he was subjected to bad treatment which forced him to seek shelter at his grandmother's abode.
10. Laurancia Mbandi (PW2), testified and told this court that she had a relationship with the deceased though they did not live together. She however stated that they were married under customary law and that the Petitioner was her co-wife. However under cross-examination she conceded that she was not married as such but were just friends with the deceased and that their friendship resulted to the birth of two sons the Applicant and Dennis Kimathi.
11. Njau M'Thuura (PW3) a maternal uncle to the Applicant testified and told this court that Lauranzia, a niece to him, had a relationship though not married and that he knew that two children including the Applicant were born out of that relationship. He further testified that the deceased paid five goats for the two children in accordance with Meru customs and that the deceased and the person who accompanied him also carried alcohol to the old men at his home owing to the fact that Laurancia stayed with him. He further testified that when the deceased took his two sons, Laurancia was married by someone else and that the deceased later took back the Applicant to them though he facilitated his circumcision.
12. The Respondent Nazarena Kanugu Marangu, has opposed this application through a Replying Affidavit sworn 4<sup>th</sup> December 2018 and oral evidence in court. The Respondent insists that the Applicant is not a biological son of the deceased and that his biological father was one Justus Miriti. She has further deposed that the Applicant has never been any of the deceased's parcel and has never occupied or utilized any. She adds that the Applicant never participated and was not present during the burial of the deceased and has annexed a copy of the Eulogy of the deceased read during the funeral to buttress her point.
13. The Respondent has faulted the Applicant for not lodging any objection after the cause relating to the deceased herein was gazetted. She further adds that she obtained an introductory letter from the Area Chief before filing the petition for grant of letters of administration and that the Chief Mugumango location did not recognize the Applicant.
14. In her oral testimony in court, the Respondent conceded that the Applicant and Dennis Kimathi were brought into their home in 1979 and that they stayed until 1985 when the deceased sent the Applicant away and that from that time onwards the Applicant never went back to the deceased's home. She added that the deceased denied paternity of the Applicant and that he told him as much. She added that the deceased acknowledged paternity of Dennis Kimathi and that she processed his birth certificate like she did to her other children.
15. Gibson Mugo Mathai (DW2) testified and told this court that he was a brother of the deceased. He recalled that the deceased at one time sent him to take the Applicant to Njau Thuura (PW3) his maternal uncle adding that the deceased denied being a father to the Applicant Eric Michael Marangu (DW3) a son to the deceased testified too and denied that the Applicant is a son to the deceased. He conceded that the Applicant used to reside at their house but that he was taken away in 1985. He added that his father never treated the Applicant as his son.
16. Justin Mawira Godfrey (DW4) also testified and corroborated the evidence of DW3. He added that he used to reside at the home of the deceased and never saw the Applicant there though he conceded that he was born in 1988. He further recalled seeing the Applicant once at the home of the deceased when he had allegedly gone to greet his younger brother Dennis Kimathi.
17. In her written submissions through counsel, the Respondent contends that she did not conceal any material fact when she petitioned for letters of administration. She asserts that she followed due procedure and contends that the Applicant has not proved paternity and therefore his application lacks merit.
18. This court has considered this summons, the evidence tendered by the applicant and his witnesses. I have also considered the Respondent's case. The main issue in this matter is whether the Applicant has established his paternity and whether the Respondent concealed material facts.
19. On the first issue regarding paternity, this court has noted that the Applicant's case is mainly hinged on oral evidence of his mother Laurencia Mpandi Kanuni (PW2) and Njau M'Thuura (PW3). The Applicant's oral evidence is rebutted by the Respondent's oral evidence of Gibson Mugo Mathai (DW2) Eric Michael Marangu (DW3) and to less extent Justin Mawira Godfrey (DW4) in view of the fact that he was born in 1988 much later after the Applicant had been born.
20. There is no dispute that the Applicant resided at the home of deceased at least from 1979 to 1985 as the Respondent has conceded the fact. I have however gone through the documents exhibited by the Applicant and noted that the birth certificate relied upon by the Applicant to establish his paternity was only obtained in 2017 and in Nairobi rather than the locality where the deceased resided and where the Applicant claims to have been born. The question put to the Applicant on why he went to Nairobi instead of applying it in Kilifi where he say he worked or in Tharaka Nithi where the deceased was domiciled, was not answered satisfactorily.
21. The Applicant further in his oral evidence stated he applied for his birth certificate to assist him in this cause which pegs the question as to sincerity or authenticity of the birth certificate. A party who applied for late issuance of a birth certificate in order to foster or strengthen his claim on the estate of the deceased person is normally treated with suspicion particularly where the only documentary evidence linking

him with the deceased person is the birth certificate. In such instances the probative value of the birth certificate is low.

22. I have also considered the claim by the Applicant that he studied at Muringa Primary School before relocating to Kajiambaki Primary School the locality where his maternal uncle lived. However the only documentary evidence tendered is school leaving certificate from Kajiambaki Primary School. There is no documentary evidence that he ever went to school in the locality where the deceased resided.

23. This court has also looked at the introductory letter from the Chief Mugumango Location dated 20<sup>th</sup> February 2017 and the said letter does not recognize the Applicant as a son of the deceased but his sibling Dennis Kimathi Marangu is recognized

24. I further noted some inconsistency in the Applicant's claim which further casted doubts on the legitimacy of his claim. His own mother Laurencia Mpandi (PW2) at first claimed that she was married to the deceased and that dowry was paid but later changed tune and said she was actually not married to him. Her uncle Njau Thuura (DW3) however was candid that Laurencia was not married to the deceased and that she married someone else after his 2 sons were taken by the deceased. PW2 further conceded under cross-examination that the deceased had in fact denied paternity of Robert Kinyua (the Applicant) and that Gison Mugo (PW2) took him back from the deceased home after the deceased denied being the father.

25. In the face of such evidence, this court finds that the Applicant on a balance of probability has failed to establish that the deceased was his father. This court finds that in the absence of reliable documentary proof showing that the deceased accepted parental responsibility like he did in the case of Dennis Kimathi, the Applicant's claim on paternity fails for want of proof.

26. I have noted that the applicant did file a caveat to the lower court which entitled him to notice of any step taken in the administration of the estate. However in view of my finding regarding paternity, this court considers that revocation of grant will only serve an academic purpose which is not useful and not in interest of judicial time because at the end of day the Applicant will not be entitled to any share of the estate of the deceased.

The upshot of this is that this court finds no merit in the Summons for Revocation of Grant dated 15<sup>th</sup> November 2018. The same is dismissed but I shall not make any order as to costs.

**Dated, signed and delivered via zoom this 27<sup>th</sup> day of April 2020.**

**R. K. LIMO**

**JUDGE**

**27/4/2020**

Ruling signed and delivered via zoom connecting both counsels on record.

**R. K. LIMO**

**JUDGE**

**27/4/2020**