



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

FAMILY DIVISION

SUCCESSION CAUSE NO. 208 OF 2007

IN THE MATTER OF THE ESTATE OF PETER GITHITU RUIBAE

JANET WANJIKU GITHITU.....1ST APPLICANT

JANE WAITHERA MWANGI.....2ND APPLICANT

VERSUS

JOYCE WAMBUI GITHITU1ST RESPONDENT

MERCY WAITHIRA GITHITU...2ND RESPONDENT

JUDGEMENT

1. Before court are two applications both seeking for annulment and revocation of the grant of letters of administration issued to Joyce Wambui Githitu (since deceased) and Mercy Waithira Githitu being, wife and daughter of the deceased respectively.
2. The 1st application is dated 11th February 2008 and filed by Janet Wanjiku Githitu who described herself as an ex-wife, claims to be entitled to ¼ share of the shop and a plot from the estate and seeking to revoke the grant on grounds that the same was obtained fraudulently by making false statement and concealment of material facts.
3. The 2nd application is by Jane Waithira Mwangi dated 14th May 2009, she also seeks for orders similar to the one in the first application on grounds that the administrator had failed to inform the court that she was a beneficiary of the estate as a daughter of the deceased.
4. The first Administrator responded to the two applications vide her replying affidavits dated 5th March 2012 and 14th July, 2009. In both she denied making false statement and concealment of material facts.
5. As relates to the 1st application the 1st Administrator contended that the issue between the Applicant therein and the deceased was resolved in HCCC No. 550 of 1979 and the amount due and owing being Kshs.35,330.75 paid to applicant as full and final settlement of her claim and therefore the said applicant is not entitled to ¼ share of the shop and any plot or assets from the deceased estate as claimed.
6. As relates to the 2nd application, the 1st administrator denied any knowledge of the said applicant and stated further that the applicant would have been seen while the deceased married her. She claimed further that the two applicants had conspired in order to get the estate from her.
7. Having analyzed the pleadings, the issue for the court's consideration is whether or not the Administrators made false statements and concealed material information from the court on petitioning for grant of letters of administration and if so, should the grant be annulled and/or revoked.
8. The court will deal with the applications separately as the circumstances and the facts of each claim are separate and distinct.
9. The evidence of the 1st applicant is that she cohabited as husband and wife with the deceased between 1969 and 1977 and left when differences emerged in their relationship. It is her claim that she assisted the deceased acquire the shop in Thika and other properties subsequently. The above is disputed by the Petitioners/Administrators. They urge that the deceased and the 1st applicant separated by 1977

and in any event they were never husband and wife and that the 1st applicant's claim was determined in H.C.C.C. No. 550 of 1979, and she was accordingly compensated.

10. The issues that are being canvassed herein would ordinarily have been considered in this cause and indeed the claim by the ex-wife considered where appropriate. However, the issues being raised in the 1st application were already considered and determined in case H.C.C.C. No. 550 of 1979 and settled. The 1st applicant's previous lawyer's letters are evident of this fact. A matter cannot be adjudicated twice. Indeed there is no indication of an appeal having been preferred or overturning the said decision. The application therefore must fail flat.

11. As for the 2nd application. There is evidence that before the deceased married the 1st administrator, he had other wives including the mother of the 2nd Objector although the 1st Petitioner denied knowledge of the existence of the 2nd Objector. The evidence of PW1 and the 1st Objector supports the assertions made by the 2nd objector, however, I find that the 1st Objector's evidence in view of the sentiments expressed above to be shaky, and therefore in the interest of justice and fair play I will require that a sibling DNA between the 2nd Objector and the 2nd Administrator be done alongside PW1 or any other close relatives of the deceased herein to establish the relationship if any between the 2nd Objector and the deceased as claimed.

12. The D.N.A examination be undertaken within 90 days of this judgment and the results submitted further orders.

13. Each party will meet their own costs.

SIGNED DATED and DELIVERED this 27th **day** of May, **2020**.

ALI-ARONI

JUDGE