



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MURANG'A

SUCCESSION CAUSE NO. 1127 OF 2013

RE ESTATE OF WAHITO WACHIRA

LOIS WANGUI WACHIRA.....APPLICANT

VERSUS

MARGARET WAMUYU WAHITO.....1ST RESPONDENT

JANE WANJA MURIGI.....2ND RESPONDENT

GODANA DIDA.....INTERESTED PARTY

JUDGMENT

1. Wahito Wachira (hereafter *the deceased*) died intestate on 24th April 1991.
2. A dispute has arisen over the administration of the estate; and, the distribution of the property known as *Plot J. 53, Mathare Valley Development Scheme (Plot 209/7963/223)* situated in Nairobi. I will refer to it as *the suit land*.
3. Her daughter, Margaret Wamuyu Wahito, (hereafter *the 1st respondent*) petitioned for letters of administration. She pleaded that the deceased was survived by two daughters: Herself and Jane Wanja Murigi (the *2nd respondent*). A grant was issued to the 1st respondent on 11th March 2014 and confirmed on 5th December 2014.
4. The suit land was subsequently sold to Godana Dida (the *interested party*).
5. Lois Wangui Wachira (hereafter *the applicant*) is aggrieved. She lodged *summons for revocation of grant* on 28th June 2018. She claims that the grant was issued fraudulently and through concealment of material facts. She also prays that the sale to the interested party be reversed.
6. The applicant claims to be the widow of one of the sons of the deceased, John Wachira, who died on 31st July 2010. That fact is contested by the 1st respondent who states that her brother was not married to the 1st respondent but was in mere cohabitation.
7. The applicant's case is that the respondents failed to disclose that the deceased had other children or dependants as particularized in paragraph 5 of her supporting affidavit. She states further that the respondents concealed that they had been bequeathed other properties by the deceased. According to her, the suit property was meant to benefit the entire family.
8. I recorded *viva voce* evidence. The applicant (PW1) relied largely on her witness statement dated 27th May 2019. On cross examination, she said that she married John Wachira in 1978 under customary law. She had one child outside the marriage and four others born during the union. She did not produce their birth certificates. She conceded that the cause was gazetted. However, she opined that it was erroneously filed in Murang'a as none of the properties is situated there and neither the deceased nor any of the dependants resided in Murang'a.
9. Her other witness was Margaret Nyambura (PW2). She said she was the widow of Fredrick Kago Wahito, another son of the deceased. The marriage was solemnized at Four Square Church, Ongata Rongai. Under cross examination, she conceded that her son was born outside wedlock. She also had no details of the other land allocated to the daughters of the deceased.
10. The respondent relied on her witness statement dated 30th April 2019. She admitted that the deceased had eight children. At the time their mother died, her late brother Fredrick Kago was residing at the suit property. He continued to live there until he died. She conceded that Kago was married to Margaret Nyambura (PW2) but they had separated. The witness said that she and the 2nd respondent sold the property

to the interested party who has since paid the full purchase price.

11. Regarding the filing of the cause at Murang'a, she agreed that the deceased neither lived nor had assets in the county. But she denied that she filed the cause in this court to conceal it from the applicant. She said she was unaware whether her late brothers were survived by any children. But under further cross examination, she admitted that Fredrick Kago had a son called Peter.

12. The 1st respondent testified that her late brother was allocated a property in Nyeri. She denied that the deceased gave her a plot in Huruma. She insisted that she bought the Huruma plot. In an earlier deposition sworn on 3rd October 2018, she deposed that the deceased's wish was that the suit property devolves to her and the 2nd respondent. She also averred that she had invested substantial sums to renovate the property.

13. The interested party was represented by counsel in the proceedings. Learned counsel informed the court that the interested party would not take to the stand or call any witnesses.

14. The applicant filed submissions on 31st July 2019 while those by the respondents were filed on 26th July 2019. The interested party did not file any submissions.

15. From the evidence, I readily find that the 1st and 2nd respondents are children of the deceased. They both rank in priority to apply for the grant. It is also true that the cause was published in the *Kenya Gazette* as Gazette Notice 330 of 2014.

16. However, the grant must be revoked for three reasons: Firstly, the respondents failed to disclose the full list of dependants. For example, they left out the son of their deceased brother Fredrick Kago.

17. Secondly, the consent annexed to the summons for confirmation of grant was only executed by the 2nd respondent in favour of the 1st respondent. The suit property was to be shared equally between them to the exclusion of other dependants. The two then sold the property to the interested party.

18. Thirdly, the deceased never resided and had no assets in Murang'a County. The suit land is in Mathare, Nairobi County. The cause should thus have been lodged at the Central Registry of the High Court at Nairobi. I find that filing of the cause at Murang'a was a stratagem contrived to conceal the matter from other family members. That defect cannot be cured by the publication in the *Kenya Gazette*.

19. I order that the grant issued to Margaret Wamuyu Wahito, (the 1st respondent) on 11th March 2014 and confirmed on 5th December 2014 be and is hereby *revoked*. I further order that the estate shall revert into the names of the deceased. It follows that the purported transfer of the suit property to the interested party is irregular and a nullity.

20. Lastly, the 1st and 2nd respondent (who rank in priority) shall apply for a fresh grant at the Family Division of the High Court of Kenya at Nairobi listing all dependants and assets of the deceased.

21. Costs follow the event and are at the discretion of the court. This is a contest between family members over inheritance. In the interests of justice each party shall bear its own costs.

It is so ordered.

DATED, SIGNED and DELIVERED at MURANG'A this 22nd day of June 2020.

KANYI KIMONDO

JUDGE

ORDER

Notice of delivery of this judgment was transmitted to the parties' email addresses. In light of the declaration of measures restricting court operations due to the *COVID-19 pandemic* and following the Practice Directions issued by his Lordship, the Chief Justice dated 17th March 2020 and published in the *Kenya Gazette* of 17th April 2020 as Gazette Notice No. 3137, this judgment has been delivered to the parties by electronic mail. They are deemed to have waived compliance with Order 21 Rule 1 of the *Civil Procedure Rules* which requires that all judgments and rulings be pronounced in open court.

KANYI KIMONDO

JUDGE

Judgment read in chambers in the presence of:

Ms. Dorcas Waichuhi, Court Assistant.