



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KIAMBU

SUCCESSION CAUSE NO 99 OF 2016

IN THE MATTER OF THE ESTATE OF NAOMI KABUI GAKUMO(DECEASED)

JANET WANJIKU KABUI.....APPLICANT

VERSUS

RACHAEL WANJIKU KAROMO.....1ST RESPONDENT

ALICE WAMBUI KIMANI.....2ND RESPONDENT

NANCY KABURA KIARIE.....3RD RESPONDENT

ALICE WANJIRU GAKUMO.....4TH RESPONDENT

RULING

1. Before me is Summons for Revocation or Annulment of Grant filed on 18th August 2014 and expressed to be brought under Section 76 of the Law of Succession Act and Rule 44(1) of the Probate and Administration Rules. The Applicant **Janet Wanjiku Kabui** seeks an order that the grant of letters of administration to the administrators in this cause be revoked.

2. The application is based on the grounds that the proceedings to obtain the grant were defective and the grant fraudulently obtained by making false statements. The application is supported by the affidavit of the Applicant. She deposed that the administrator **Nancy Kabura Kiarie** (the 3rd Respondent) had petitioned for a grant purporting that the Applicant was her to be a co-petitioner in **Kiambu CM's Succession Cause Number 151 of 2013** and that the purported signature by the Applicant contained in the said petition was a forgery. She contended that the administrator's deceit and impersonation was meant to disinherit her. As such the grant should be disregarded and the Applicant registered as the proprietor of the asset described as **LR No. Kiambaa/Ruaka/4112** as per the confirmed grant issued in **Kiambu CM's Succession Cause Number 58 of 2013** at Kiambu filed by the Applicant.

3. **Alice Wambui Kimani** and **Nancy Kabura Kiarie** (the 2nd and 3rd Respondents respectively) filed their replying affidavit on 24th September, 2014 on their own behalf and on behalf of the 1st and 4th Respondents herein. They deposed that while petitioning for letters of administration in respect of the estate of the deceased they had included all beneficiaries and that they had proposed equal sharing of the estate even though the Applicant had already benefitted earlier from a gift of a land parcel in Juja and therefore had no claim on the asset in this case. They contended that the Applicant had also been receiving rent from the deceased's estate and that she has approached the court with unclean hands in a bid to exclude all the other beneficiaries.

4. In her supplementary affidavit, the Applicant denied the Respondents' allegations and reiterated that it had been agreed that she would inherit the sole asset herein and share the rental income with the 4th Respondent.

5. Upon directions being given, **William Karomo Kinuthia**, **Loise Wamaitha Karomo**, **Stephen Njoroge Mungai** and **Ndungu Kinuthia** filed their witness affidavits on 3rd July 2017 which were all similar in content. They deposed that the 1st, 2nd and 3rd Respondents got their respective inheritance in the estate through their deceased husbands, being LR. NO. KIAMBAA/RUAKA/1016, 1017 and 1018 respectively. They contended that they supported the deceased's wish that the Applicant inherits LR. NO. KIAMBAA/RUAKA/4112 alone.

6. The Summons for Revocation of Grant was canvassed by way of written submissions. The Applicant submitted that the deceased shared her estate *inter vivos* so that the 1st, 2nd, 3rd and 4th Respondents were given **LR. Nos. Kiambaa/Ruaka/1016, 1017, 1018 and 2274** respectively and that being unmarried the Applicant lived with the deceased on **LR. Kiambaa/Ruaka/4112**. She contended that the Respondents already received from the family's estate and their push for more inheritance is oppressive and a scheme to disinherit the Applicant. She urged the court to revoke the grant issued to **Nancy Kabura Kiarie** and the Respondents' respective shares.

7. The Respondents submitted that they were not part of **Succession Cause No. 58 of 2013** where the confirmed grant in the Applicant's

favour and that in any case, it was agreed during a family meeting that the suit property should be divided amongst the 1st, 2nd and 3rd Respondents while the Applicant received a 5 acre plot being **Mai Mahiu/134**. It was contended that the Applicant was informed prior to the grant being confirmed but refused to sign the requisite forms. Counsel for the Respondents submitted that the confirmed grant obtained by the Applicant on 26th June, 2013, was obtained without the consent of other beneficiaries therefore irregularly obtained and ought to be revoked. Further, the court was urged not to rely on the Applicant's witness affidavits as the witnesses are not beneficiaries of the deceased's estate.

8. Lastly, it was submitted that the Applicant intends to take the deceased's property to the exclusion of all the other beneficiaries. The Respondents prayed for distribution to proceed as per the confirmed grant dated 26th September, 2013 and the Summons for Revocation be dismissed for failure to disclose a cause of action. The case of in **Re Estate of Stephen Kurgat Kimwei (2017) eKLR** was relied on. The court was urged to dismiss the Applicant's application.

9. The court has considered the affidavit material and submissions made in respect of the Summons for Revocation filed on 18th August 2014. It is pertinent to restate briefly the undisputed background to the summons. The deceased herein **Naomi Kabui Gakumo** was the second wife of **Robert Gakumo Karomo** who predeceased her and her co-wife (1st wife) **Rachel Wairimu**. Upon the death of **Robert Gakumo Karomo (Karomo)** the widows were appointed joint administratrix of his estate. The deceased herein had five children namely:

- a) Janet Wanjiku Kibui (the Applicant);
- b) Peter Karomo Gakumo (deceased, and husband to Rachael Wanjiku Karomo, the 1st Respondent herein);
- c) Joseph Njuguna Gakumo (deceased, and husband to Alice Wambui Kimani, the 2nd Respondent herein);
- d) Solomon Kiarie Gakumo (deceased, and husband to Nancy Kabura Kiarie, the 3rd Respondent herein); and
- e) Alice Wanjiru Gakumo the 4th Respondent herein.

10. It would appear that pursuant to the succession proceedings in respect of the estate of the senior **Karomo** each of his houses received their share of the estate, and in particular a land parcel No. LR KIAMBAA/RUAKA/44 was subdivided into several subdivisions which were then shared in the individual houses. In the house of the deceased herein, the subdivisions were shared as follows

- a) LR NO. KIAMBAA/RUAKA/1017 (0.617 ha) – Joseph Njuguna Gakumo;
- b) LR NO. KIAMBAA/RUAKA/1018 (0.617 ha) – Solomon Kiarie Gakumo;
- c) LR NO. KIAMBAA/RUAKA/1016 (0.617 ha) – Rachel Wanjiku Karomo wife of Peter Karomo Gakomo (deceased);
- d) LR NO. KIAMBAA/RUAKA/2274 (0.074 ha) – Alice Wanjiru Gakumo; and
- e) LR NO. KIAMBAA.RUAKA.4112 – (0.385 ha) -- to Naomi Kabui Gakumo (deceased).

11. The deceased died on 21st January 2013. The Applicant herein filed Succession Cause No.58 of 2013 at the CM's Court Kiambu. She was issued with a grant on 20th January 2013 pursuant to the requisite publication vide gazette Notice No.5242 of 11th April 2013 (see annexure **"JWK 4"** to the Applicant's supporting affidavit). The grant was subsequently confirmed vide certificate of confirmation dated 26th June 2013. By the said confirmation the Applicant herein was the sole heir of the two assets that the deceased died possessed of, namely land parcel No. LR KIAMBAA/RUAKA/4112 and funds in Equity Bank amount No. ...XXXXXX969.

12. Matters however did not rest there because on 23rd July 2013, a second petition for letters of administration in respect of the estate of Naomi Kabui Gakumo was filed in the CM's Court Kiambu, purportedly by the Applicant and Nancy Kabura Kiarie (3rd Respondent). The cause, **CM's Succession Cause No. 151 of 2013** was apparently gazetted vide gazette Notice No. 11793 of 31st July 2013 and a grant issued in the names of the petitioners on 17th September 2013. On 25th September 2013 a Summons to confirm the grant was filed. The sole asset for distribution was the self-same land parcel LR NO. KIAMBAA/RUAKA/4112. The beneficiaries listed in the summons include the Applicant and the four Respondents. A day after the filing of the Summons for confirmation the application was heard and granted on 26.9.13. A certificate of confirmation of grant issued on the same date, indicating that the sole landed estate was distributed equally between the Applicant and the four Respondents.

13. A subsequent Summons dated 26th November 2013 and filed on 3rd December 2013 was filed by the 3rd Respondent seeking to authorize the Executive Officer of the court to sign the **"necessary transfer forms on behalf of Janet Wanjiku Kabui Co-administrator who has refused to sign."** On 5th December 2013 the motion was allowed, paving way for the registration of the 3rd Respondent and the Applicant on 28th January 2014 as joint proprietors of the land parcel LR NO. KIAMBAA/RUAKA/4112. Thus, by the time the Applicant attempted to effect the transmission of the said property to herself under the grant issued to her in CM's Succession Cause No.58 of 2013, it was too late.

14. Section 76 of the Law of Succession Act provides that:

" A grant of representation whether or not confirmed, may at any time be revoked or annulled if the court decides, either on application by any interested person or of its own motion –

a) That the proceedings to obtain the grant were defective in substance;

b) That the grant was obtained fraudulently by the making of a false statement or by the concealment from the court of something material to the case;

c) That the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant notwithstanding that the allegation was made in ignorance or inadvertently;

d)

e)"

15. The Applicant's chief complaint is that she did not apply at any time in conjunction with the 3rd Respondent for the grant issued in CM's Succession Cause No.151 of 2013. This allegation has not been answered directly by the 2nd and 3rd and 4th Respondents in their replying affidavit. Paragraph 4 of the said affidavit which comes closest to this issue merely states:

"THAT our mother died intestate and we petitioned for letters of administration and included everyone vide the Succession Cause No. 151 of 2013 and due process was followed." (sic).

16. However, in written submissions, the Respondents asserted inter alia that:

"The Respondents who are the beneficiaries of the deceased's estate, with the exception of the Applicant/objector herein signed the consent form 38 and filed the application for grant of letters of administration vide Succession Cause No.151 of 2013 at Kiambu. However, the Applicant refused to sign the necessary forms which resulted in the matter taking so long to be concluded ... the Applicant has been refusing to co-operate and sign the documents required as she wanted to have all the deceased's assets to herself ... Prior to the confirmed grant issued on 26th September 2013 to the Respondents, all the beneficiaries, including the Applicant herein, was informed orally but the Applicant declined to either sign the requisite forms or even attend court." (sic)

17. Looking at the petition documents in the CM's Succession Cause No.151 of 2013 whose file is enclosed in the instant High Court file, it is evident that the Petition for letters are endorsed, seemingly by the same hand, with the names NANCY KABURA KIARIE and JANET WANJIKU KABUE in the place designated for the Petitioners' signatures. This is also true of other forms, namely Form P&A 12 and the affidavit in support of Petition, Form P&A 5. As for the two affidavits in support of the summons to confirm grant, purportedly sworn by Nancy Kabura Kiarie and Janet Wanjiku Kibui on 24th September 2013, one signature (not a name) is inscribed above the word "DEPONENT". The name of the deponent is not indicated under the signature. Little wonder that the Respondents' affidavit is silent on the Applicants' denials to have jointly applied for the grant in Succession Cause No. 151 of 2013.

18. Besides, the Applicant had by the date of filing of the said cause already obtained a grant in her own name in Succession Cause No.58 of 2013. On all accounts she had no reason to join the other Respondents in seeking a new grant in respect of the same property. Evidently, the 2nd Respondent misrepresented facts to the court by filing documents which were false through purporting that the Applicant was her co-Petitioner and had signed the requisite documents. That conduct constitutes fraud on the part of the 2nd Respondent especially. More troubling is the manner in which the Petition was rushed through the court process, as I have demonstrated earlier in setting out the history of the matter.

19. It is for instance inconceivable that a grant issued on 17th September 2013 was confirmed on 26th September 2013. No special circumstance, beyond alleged "expediency" is given in the affidavit supporting the summons, to justify the confirmation of the grant before the expiry of the period of six months required by the law is given. The process of obtaining and confirming the grant was so swift that one is tempted to believe the Applicant's assertion that the prime movers were actuated by ulterior motives, and possibly that, the Respondents had become aware of the existence of the Applicant's own **Succession Cause No. 58 of 2013**. Moreover, the proceedings in the subsequent Succession Cause No.151 of 2013 are and were irregular and defective in as much as they relate to the same deceased person, beneficiaries and estate.

20. The Respondents complain that the grant issued to the Applicant in Succession Cause No.58 of 2013 was also obtained irregularly. That may or may not be true. But the cure would lie in applying to revoke the grant and not in filing a fresh cause in respect of the same subject matter and rushing the process in the manner evident in Succession Cause No. 151 of 2013.

21. It is a patent illegality that there are two subsisting grants in respect of the estate of the deceased herein. If for no other reason, that is reason enough to find that the grant impugned in this case, and which issued months after the issuance of the grant in Succession Cause No. 58 of 2013 is the product of a defective process and cannot be allowed to stand. Let me also add the caveat that in so saying the court is not in any way endorsing the propriety of the grant in the latter cause. The Respondents have raised their own objections in that regard, but there is no application before this court challenging the grant issued in Succession Cause No. 58 of 2013. The court cannot condone the abuse and subversion of its processes in the manner disclosed in this matter. In the circumstances, the court is persuaded that the grant issued and later confirmed in CM's Succession Cause No. 151 of 2013 is an anomaly and must be nullified. It follows that any transmission effected pursuant to the nullified grant are null and void. The Summons filed on 18th August 2014 is therefore allowed.

22. The court further directs the Land Registrar Kiambu to take the necessary steps within 45 days of today's date to ensure that the proprietorship of the land parcel LR. NO. KIAMBAA/RUAKA/4112 reverts back to the position obtaining at the time of the demise of the deceased on 21st January 2013. Additionally, the court directs the Deputy Registrar to call for the CM's Succession Cause No. 58 of 2013 which will be consolidated with the CM's Succession Cause NO.151 of 2013 which is already housed inside the instant High Court file.

Thereafter, any party will be at liberty to move this court as they deem fit.

23. As regards the costs occasioned by the summons for revocation of grant, each party will bear her own costs.

SIGNED ON THIS 12TH DAY OF JUNE 2020 AND DELIVERED VIA eMAIL TO THE PARTIES ON 12TH DAY OF JUNE 2020

C. MEOLI

JUDGE