



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

SUCC CAUSE NO. 464 OF 2009

In The Matter Of The Estate Of Ngarima Murunya- Deceased

MUCHIRI NGARIMA..... PETITIONER

Versus

NELISA MUTHONI MBURIA..... APPLICANT

JUDGMENT

1. **NGARIMA BURUNYA (“the deceased”)** died intestate on 15th August 1987. On 3rd February 2009 the Petitioner petitioned for letters of administration which were later granted to him. He listed MAGUMONI/MWOGGE/426 as the only asset of the deceased. He also listed the following as the deceased’s dependants

1. **Rithi Ngara Nkariama (Deceased)- Son**
2. **Muchiri Nkariama - Son**
3. **Micheni Njagi - Grandson**
4. **Osward Mwenda - Grandson**
5. **Nelisha Muthoni - Granddaughter**

2. On 28th September 2009, Nelista Muthoni Mburia filed summons for revocation/annulment of grant citing that the following reasons:-

- a. That the petitioner obtained the grant herein secretly and without the knowledge and consent of the applicant who is the only daughter of Rithi Ngara Ngarima (deceased).
- b. That the petitioner and other successors are preparing to evict her from the deceased’s estate where she has lived all her life together with three members of her family.

[3] In his replying affidavit Muchiri Ngarima stated that he is the only surviving child of the deceased. Rithi Ngara his deceased brother died without any known wife or child and contrary to the interested parties allegations she has never lived on the Suit land. He averred that it is only after he filed these proceedings that she erected a semi-permanent structure. To the best of his knowledge the applicant is the daughter of Mburia and Ciambaka all of whom are deceased. The applicant therefore is a trespasser and not entitled to the relief sought.

[4] In a supplementary affidavit dated 22nd June 2016 the applicant added that her grandfather gave each of his sons a piece of land. The petitioner was given land at Kiriani and her father was given the suit land. The petitioner sold part of his land to the chief who has taken possession of it. This same chief wrote a letter supporting her claims. The applicant stated that the petitioner is not entitled to the suit land herein.

[5] **PW1 MUCHIRI NGARIMA** testified and told the court that he knows the objector, as she is the only daughter of his late brother, M’Arithi Ngala. He stated that he had not rejected the objector only that he needed time to call the family members and share out the land. He said that the deceased had five children Judy Karimi (deceased), Ciambui Nyamu (deceased), Alice Cianthuni, M’Arimito Ngara, and Micheni Njagi. And that the wishes of the deceased were that all his children should share in the land. He could not tell how much land each should receive.

[6] In cross-examination, the petitioner stated that in 2009 he registered the suit in his name and subdivided it into 3 portions; 2387, 2388,

2389. He denied that he transferred estate land to strangers. Yet, he stated that he transferred 2387 to Oswald Mwenda because he gave him money to initiate this succession cause. He confirmed that the said Oswald is not their relative whatsoever. He denied that he listed him as a grandson. He transferred 2388 to his son Micheni Njagi and 2389 to himself. He admitted that the objector lives on 426 but does not on half of the land as alleged. Micheni also lives there but he has no house on the said land.

ANALYSIS AND DETERMINATION

[7] The following two inextricable issues emerge:-

a. Whether the grant issued to the petitioner should be revoked?

b. How should MAGUMONI/MWOGI/426 be distributed?

Revocation of grant

[8] The grounds on which a grant will be revoked or annulled are stated in **Section 76 of Law of Succession Act cap 160 Laws of Kenya** as follows

‘A grant of representation, whether or not confirmed may at any time be revoked or annulled if the court decides on an application by any interested party 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 not withstanding that the allegation was made in ignorance or inadvertently.

(d)

(e)

[9] A person who wants a grant to be revoked must demonstrate through concrete evidence one or more of the grounds set out in the said section. In this case, it must be shown that the proceedings to obtain the grant were defective in substance, or that the grant was obtained fraudulently by making of false statements, or by concealment of something material to the case, or that the grant was obtained by means of untrue allegations of facts essential in point of law.

[10] In his testimony, the petitioner perjured himself when he changed his earlier narrative and admitted that the applicant herein is his niece and lives on the suit land. See his replying affidavits where he claimed that the objector was a complete stranger and trespasser on the estate. In the petition the Objector is listed as one of the dependants of the deceased yet he did not involve her or notify her of these proceedings. These matters show that from the beginning of this succession case he was aware that the objector is a dependant of the deceased. He must or ought to have been aware that he ought to inform the applicant about this cause as she is his deceased brother’s daughter. He chose to ignore the applicant for reasons known to him. Thus, the grant was obtained fraudulently. Accordingly, the grant is a perfect candidate for revocation. I revoke the grant issued to the petitioner.

Distribution

[11] Although he initially denied, the petitioner sold part of estate property to a stranger know as Oswald Mwenda. He claims that the consideration was the money he gave him to file these proceedings. That kind of transaction offends the law for it has been done before confirmation of the grant; it is also an act of intermeddling punishable by criminal sanctions under section 45 of the Law of Succession Act. Thus, the transaction with Oswald is unlawful and, therefore, null and void. He also transferred land to his own son Micheni Njagi. This was again in total disregard of the law and violated the right of the rightful beneficiaries of the estate. His son has not proved to be a dependant under section 29 of the Law of Succession Act. His father, the petitioner, is also alive and so he cannot also take directly from the estate. The transfer was therefore contrary to the law. I suspect that he was doing all these things to disinherit the objector; notably a daughter.

[12] Be that as it may, the objector is the only daughter of the late M’Arithi, the son of the deceased. As such, she is entitled to the share of her late father under the principle of representation. Her late father was a son of the deceased and so takes equal share as the petitioner in the estate. I note that the petitioner is still bent at prolonging his stealth designs to disinherit the objector when he stated that he wants to summon all family members so that that he can distribute the land. I find it canning when he stated that he does not know how much each person should get from the estate. See what he said to the court on 24th September 2018 and 2nd October 2018. The evidence by the objector that the petitioner was given his own land and the estate property was given to the late M’Arimi could be true. However, I am prepared to and I declare that the petitioner and the objector are the rightful beneficiaries of the estate property. The distribution of the estate will therefore be guided by the principle of equality and equity enshrined in section 38 of the Law of Succession Act that provides;

‘Where intestate has left a surviving child or children but no spouse

Where an intestate has left a surviving child or children but no spouse, the net intestate estate shall, subject to the provisions

of sections 41 and 42, devolve upon the surviving child, if there be only one, or shall be equally divided among the surviving children.’

[13] Consequently, I make the following specific orders;

i. The confirmed grant issued on 24th June 2009 is hereby revoked and all the subsequent titles MAGUMONI/MWOGGE/2387, 2388 and 2389 are cancelled and shall revert back to one title in the name of the deceased

ii. That fresh grant shall be issued to the petitioner jointly with the applicant

iii. That in view of the age of the matter, the grant issued herein is confirmed in terms below.

iv. That the MAGUMONI/MWOGGE/426 shall be shared equally among MUCHIRI NGARIMA and NELISA MUTHONI MBURIA.

v. As this cause involves close family members, I order each party to bear own costs.

Dated, signed and delivered in open court at Meru this 28th day of January, 2019

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F. GIKONYO

JUDGE

In presence of:-

Ann for protestor

Manjau for Petitioner – Mutwiri holding brief

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F. GIKONYO

JUDGE