



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KERUGOYA

SUCCESSION CAUSE NO. 346 OF 2012

IN THE MATTER OF THE ESTATE OF NDUKU NJAGI.....DCD

IRENE MUTHONI MURIITHIAPPLICANT

V E R S U S

JOSEPH GICHOBI NDUKU.....1ST RESPONDENT

PAULINE WAMUTIGE NDUKU2ND RESPONDENT

JULIUS NJAGI NDUKU.....3RD RESPONDENT

JUDGMENT

1. This matter relates to the estate of Nduku Njagi, deceased.

Joseph Gichobi Nduku was issued with a grant of letters of administration in the estate of Nduku Njagi on 16/05/2012 and the same was confirmed on 19/03/2013 whereby the deceased's estate **Kabare/Mutige/278** was shared out as hereunder;

Joseph Gichobi Nduku – 3.3 acres

Pauline Wamutige Nduku – 2.3 acres

Julius Njagi Nduku – 3.3 acres

Irene Muthoni Muriithi }

Ruth Njoki Gichobi }

Esther Waguama Ndambiri }

Lucy Wakithii Gichimu } - 1 acre jointly

Eunice Wambui Gitau }

Violet Kariuko Kariithi }

Eunice Wambui Gitau }

2. The applicant in this present application that is Irene Muthoni Muriithi had filed Succession Cause No. 226/2013 in the estate of the deceased and was issued with a grant of temporary letters of administration on 7/9/2012. On 12/5/2016 Justice Limo ordered that the two causes be consolidated.

3. The application pending before this court is a summons for revocation or annulment of grant under Section 76 (a) (b) (c) (III) of the law of Succession Act. The Applicant Irene Muthoni Muriithi contends that the proceedings to obtain the grant herein were defective in substance. That the grant was obtained fraudulently by making of false statement by concealment from court something material to the case. It is further contended that the grant was obtained by means of untrue allegation of fact essential on a point of law and the person to whom the grant was made has failed to proceed diligently with the administration of the estate.

4. The application is supported by the affidavit of the applicant who deposes that the grant was issued and confirmed to Joseph Gichobi Nduku who had not disclosed all the beneficiaries. That the deceased was survived by ten beneficiaries including herself. She deposes that the estate of the deceased comprised in land parcel No. Kabare/Mutige/278 should be distributed to all the children of the deceased. She alleges fraud in that the grant of Letters of Administration was in respect of Succession Cause No. 143/2013 and not Succession Cause No. 346/2013. She further contends that she had no knowledge of the confirmation and distribution of the estate.

5. The Court gave directions that the summons for revocation of grant be heard by way of oral evidence in court and parties adduced evidence.

6. The parties then filed submissions. For the applicant, it was submitted that the deceased left the following beneficiaries.

a) Julius Njagi Nduku

b) Ruth Njoki Gichobi

c) Rose Kariuki Nduku

d) Lucy Wakuthii Gichimu

e) Irene Muthoni Muriithi

f) Esther Waguama Nduku

g) Eunice Wanjiru Gitau

h) Failoret Wangithi Gachoki

i) Joseph Gichobi Nduku

j) Poline Wamutige Nduku

7. The main contention by the applicant is that she was not informed of the succession cause. It is submitted that:-

i) That the identity card/s numbers are not noted on the court record of 19/3/2013.

ii) ***That the beneficiaries did not append their signatures.***

iii) ***That no consent for distribution had been filed in court***

iv) ***That due to the above (i)(ii) and (iii) the respondent undertook unethical or illegal action by bringing unknown persons in court on 19/3/2013.***

v) ***That the applicant and her siblings could not have participated in the court process on 19/3/2013 as had already filed on 27th June 2012 the Principal Magistrate Succession Cause Number 197 of 2012, Kerugoya which is now High Court Succession Cause Number 226 of 2013, Kerugoya.***

vi) ***That the applicants could not have filed summons for confirmation of grant dated 28th March, 2013 (in High Court Succession Cause Number 226 of 2013, Kerugoya) if she participated in the confirmation of grant on 19th March, 2013 in High Court Succession Cause Number 346 of 2012, Kerugoya.***

vii) ***That the respondent Pauline Wamutige Nduku and Julius Njagi Nduku conspired to defraud the other siblings.***

viii) ***That the Respondent commenced this suit fraudulently together with Pauline Wamutige Nduku and Julius Njagi Nduku after lying in Principal Magistrate Misc. Application Number 26 of 2012, Kerugoya that the Chief had refused to issue the introductory letter.***

8. It is further submitted that the action by the respondent is unethical, fraudulent, illegal and discriminatory by dint of Article 27(3) of the Constitution which gives women and men equal rights and treatment.

9. The applicant relies on **Lucia Wangechi –v- Francis Mburu Njii (2014) eKLR** and **Grace Kagwiria –v- Jephath Mburugu Ringera & Another (2015)eKLR.**

10. For the respondent it was submitted that the application for revocation of grant is an afterthought and its an appeal disguised as an application for revocation of grant. That the beneficiaries appeared before Lady Justice C. W. Githua and the grant was confirmed. That the estate was distributed and the beneficiaries obtained their respective portions. That the applicant proceeded to sell her portion and is not occupied by purchasers. That it is not possible that seven strangers could have appeared in court during the confirmation of grant. That there

was no child of deceased who was left out.

11. I have considered the evidence adduced, and the submissions. The issue which arises for determination is revocation of grant. The provision dealing with revocation of grant and under which this application is brought is **Section 76 of the Law of Succession Act Cap 160 Laws of Kenya (to be referred to as "the Act)**. A party seeking revocation of grant must prove the grounds under the section which are that the proceedings to obtain the grant were defective in substance, the grant was obtained fraudulently by making of a false statement or concealment from court something material to the case or the grant was obtained by making of untrue allegation of fact which is essential on a point of law to justify the grant irrespective of whether the allegation was made in ignorance or inadvertently. Where any of these grounds are proved the court will not hesitate to revoke the grant.

12. Revocation of grant Section 76 of the Law of Succession Act Cap 160 states;

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 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 notwithstanding that the allegation was made in ignorance or inadvertently.

13. From the record of this court the applicant and all the other beneficiaries were present in court on 6/12/2012 when the Judge as it has been pointed out that the beneficiaries 1 – 10 all state individually we have agreed to the proposed mode of distribution. The Judge then ordered that the grant be confirmed. The applicant Irene Muthoni is listed as one of the beneficiaries who was present before the Judge on 19/3/2013 when the grant was confirmed. It is expected that the Judge satisfied herself that those who were present before her were the beneficiaries who were listed. The applicant has alleged that those present before the Judge were strangers. He who alleges must prove. The applicant has not discharged the burden of prove that strangers appeared before the Judge when the grant was confirmed.

14. The applicant was listed as one of the beneficiaries when the petition was filed. The confirmed grant show that she was given a share. In her testimony in court the applicant stated that she wanted the estate to be shared equally. When she was cross-examined she stated that she came to court in this matter and produced identity cards. When she was cross-examined the applicant admitted that they entered the portion which they were allocated. She alluded to having leased the portion which was distributed to her to raise money to file succession.

15. I find that as submitted by the respondent the application for revocation of grant is an afterthought. The applicant was aware of the Succession Cause, she consented to the confirmation and she has taken possession of the portion allocated to them and leased it. I reject her assertion that she was not aware of the Succession Cause.

16. The Cause was not filed secretly. From the record, it is clear that it was publicized vide Gazette Notice No. 7154 of 25/5/2012 before the temporary letters were issued. There was no objection or protest filed. The applicant was not discriminated as she consented to the mode of distribution before the Judge. The law does not require that parties sign a consent before confirmation. Where the parties appear before the Judge and consent to the mode of distribution, that appearance and confirmation is sufficient for the Judge to confirm the grant. All what the Judge is supposed to do is to confirm that the beneficiaries entitled to the estate are the parties before her and they consent to the mode of distribution. This appears to be what my Justice Githua did when she confirmed the grant.

17. The respondent confirmed that then after the confirmation title deeds were issued. The applicant consented to Pauline Wamutige Nduku getting a bigger share since it was agreed she lives on the land as she was not married. The applicant is stopped from alleging that she was discriminated.

18. The applicant has not proved that the proceedings were defective. The petition was properly presented in court and concluded with a confirmation of grant by consent of all the beneficiaries. The applicant has not proved that the grant was obtained fraudulently or by concealment of material facts or by means of making untrue allegations.

19. In Conclusion:-

i) The applicant has not proved any of the grounds listed above warrant this court to order the revocation of grant.

ii) The application lacks merits and is therefore dismissed.

iii) Since the two causes were consolidated that is Succ Cause No. 346/12 and 226/2013, the confirmed grant in Succ 346/2012 and mode of distribution will apply to the estate of the deceased and there cannot be two causes over the same estate.

iv) I award costs to the respondents.

Dated at Kerugoya this 24th Day of January 2019.

L. W. GITARI

JUDGE