



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI LAW COURTS
FAMILY DIVISION
SUCCESSION CAUSE NO. 2015 OF 2013
IN THE MATER OF THE ESTATE OF SIMON MBURU GACHUHI (DECEASED)

DAVID NGUGI BURU.....APPLICANT

VERSUS

MARGARET GATHONI MBURU..... RESPONDENT

RULING

1. The deceased Simon Mburu Gachuhi died intestate on 20th July 2010. A grant of letters of administration intestate was issued to Margaret Gathoni Mburu (the respondent) on 10th December, confirmed on 14th October 2014 and rectified on 9th February 2015. According to the petition the deceased was survived by:-

- a) Margaret Gathoni Mburu - Widow (respondent);
- b) Mary Wanjiku Mburu – daughter;
- c) Ann Wambui Mburu – daughter;
- d) Rufus Kinyanjui Mburu – son;
- e) Josephat Ngigi Mburu – son; and
- f) Grace Wachu Mburu - daughter

The petition also listed the following as being the assets forming part of deceased's estate:-

- a) Title Number Naivasha /Mwichiringiri block 4/1585;
- b) Title Number Naivasha /Mwichiringiri block 4/1565;
- c) Title Number Naivasha /Mwichiringiri block 4/1580;
- d) Laikipia/Lariak /159;
- e) Dagoretti/Kinoo/4470;
- f) Dagoretti/Ruthimitu/834;
- g) Dagoretti/Ruthimitu/429;

h) Equity Bank A/C No. xxxxxxxxxxxx; and

i) Kenya Airways Reference No. xxxxxxxxxxx shares A/C No. 24764.

2. The applicant brought the present application dated 10th August 2016 seeking orders that:

a) the letters of administration intestate and certificate of grant made on 14th October 2014 and rectified on 9th February 2015 be revoked and/ annulled together with all the transactions carried out on their basis;

b) estate of the deceased be protected in line with **section 45 of the Law of Succession Act** and all parties herein be and hereby restrained from disposing off or otherwise intermeddling with the properties of the estate in particular LR No Kikuyu/Kikuyu/block 1/329, Laikipia/Lariak/159, Dagoretti/ Ruthimitu/834, Dagoretti/Kinoo/4470, commercial plot in Maina Village Nyahururu, two shares of Witeithie Gwaka Investment Limited, one tractor, Kenya Commercial Bank A/C No. xxx-xxxxxxxx and Equity Bank A/C xxxxxxxxxxx;

c) *status quo* be maintained over all the assets of the estate of the deceased mentioned above pending determination of the application;

d) pending hearing and determination of the application, the respective registrars of lands be ordered to register restrictions/prohibition against L.R. Nos. Kikuyu/Kikuyu/Block 1/329, Laikipia/Lariak/159, Dagoretti/Ruthimitu/834, Dagoretti /Kinoo/4470 and commercial plot in Maina Village Nyahururu, two shares of Witeithie Gwaka Investment Limited;

e) the respondent do deliver certificate of title for all the properties of the deceased improperly issued to the respondent on basis of the revoked and or annulled certificate of grant for cancellation;

f) the respective registrars of lands be ordered to cancel registrations made to the titles of parcels of land initially registered in the deceased's name as a consequence of the revoked certificate of confirmation of grant of letters of administration together with all subsequent registrations and subdivisions therein; and

g) cost of the matter.

3. The application was supported by the affidavit of the applicant dated 10th August 2016. It was his case that the deceased had two wives with the 1st one being his mother, Esther Njeri Mburu, who got married to the deceased on 27th December 1958 and died on 11th October 2007 leaving behind their children namely; Wilfred Kinyanjui (deceased), John Thiru Mburu (deceased), Samuel Njenga Mburu (deceased), Peter Kanithi Mburu, Nancy Wanjiru Mburu, David Ngugi Mburu (applicant) and Kenneth Nganga Njeri Mburu. It was his case that they were neither involved nor were their names included in the petition for letters of administration. He averred that the petition was founded on fraud, misrepresentation and concealment of material facts from the court and that as a result he and members of his late mother's house have been disinherited.

4. The respondent swore a replying affidavit to state that when she got married to the deceased on 11th February 1984 he had already divorced the applicant's mother. When he died and she wanted to file the petition, she got in touch with the applicant and his siblings to discuss the way forward. They instead declined saying she was not the deceased's wife. She further stated that before the deceased died, he gave the applicant and his siblings valuable land in Kinoo but they declined saying they were not his children. They subsequently sent thugs who badly assaulted the deceased who was hospitalised. Lastly, it was her case that the property subject of these proceedings were bought by her during the marriage and registered in the deceased's name, and all this happened after the divorce of the applicant's mother. Therefore, the applicant and his siblings had no claim to the estate.

5. Parties filed their written submissions reiterating the contents of their affidavits which I have considered.

6. The circumstances that can lead to the revocation of grant have been set out in **Section 76 Law of Succession Act**. For a grant to be revoked either on the application of an interested party or on the court's own motion there must be evidence that the proceedings to obtain the grant were defective in substance, or that the grant was obtained fraudulently by making of false statement, 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. A grant may also be revoked if the person named in the grant has failed to apply for confirmation or to proceed diligently with the administration of the estate. It may also be revoked if it can be shown to the Court that the person to whom the grant has been issued has failed to produce to the Court such inventory or account of administration as may be required.

7. It was admitted by the respondent that the deceased had another family whose children included the applicant. It is clear from the petition, and the letter from the Office of the President introducing the deceased's family, that the first family of the deceased was excluded. The proceedings leading to the confirmation of the grant did not involve any member of this family. The applicant was therefore entitled to complain in the instant application.

8. The respondent was guilty of non-disclosure of a material fact by not indicating the applicant and his siblings in the petition. She did not seek or obtain their consent. According to **section 51(2) (g) of the Law of Succession Act** and **rule 7(1)(e) of the Probate and Administration Rules** the process leading to the grant was defective in substance. To the extent that the respondents did not include the names of the applicant and his siblings, the petition was materially defective. It is now trite that where there is such defect and non-disclosure the grant has to be revoked (**In re Estate of Charles Ngotho Gachunga (Deceased) [2015]eKLR**).

9. However, although a party may establish a case for revocation as is the case herein, the court rather than revoke the grant may make other

orders which fit the circumstances of the case. For instance, in the case of **In the Matter of the Estate of Thareki Wangunyu aka Thareka Wangunyo (Nairobi High Court Succession Cause No. 1996 of 1999)**, where a widow obtained a grant without disclosing one of her step-children and some of her own children as beneficiaries, the court held that although the matter merited revocation of the grant, it instead ordered that the stepchild left out be included in the list of beneficiaries without interfering with the grant.

10. In the particular circumstances of this case, I will not revoke the grant issued to the respondent. Instead, I revoke and set aside the certificate of confirmation. The proceedings of 14th October 2014 that confirmed the grant are reviewed and set aside. The properties subject of the proceedings shall revert into the name of the deceased. If there have been any transfers to the beneficiaries, the same are cancelled. Further, an order is issued preserving all these properties until the matter is heard and concluded.

11. In the meantime, the application dated 11th July 2014 for the confirmation of the grant is reinstated. The same shall, within 14 days, be served on the applicant and each of his siblings who shall, within 30 days, each respond to the same. Upon such response, the respondent shall have 14 days to file any further or other affidavit.

12. The cause shall be mentioned on **10th April 2019** for directions on hearing.

DATED and SIGNED at Nairobi this 20TH day of FEBRUARY 2019

A.O. MUCHELULE

JUDGE

DATED and DELIVERED at Nairobi this 27TH day of FEBRUARY 2019

ALI-ARONI

JUDGE