



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KIAMBU

SUCCESSION CASE NO. 37 OF 2017

IN THE MATTER OF THE ESTATE OF NAOMI WAMBUI MACHARIA (DECEASED)

R U L I N G

1. Before me is Summons for Revocation or Annulment of Grant filed on 9th September, 2011 brought under Section 76 of the Law of Succession and Rule 44(1) of the Probate and Administration Rules. The four Applicants seek that the grant of letters of administration to **SAMUEL MACHARIA** made on the 10th March, 2011 be revoked and or annulled.
2. The Application is premised on the chief ground that the proceedings to obtain the grant were defective in substance having been fraudulently obtained by concealment of the material fact that the Applicants were sons of the deceased herein and that the petitioner failed to obtain the Applicants' consent.
3. **Julius Njuguna Macharia** swore the affidavit in support of Summons on 9th September, 2011, on his own behalf and on behalf of his brothers **Julius Karehu Macharia, Peter Mbugua Macharia and Kimemia Macharia**. He deposed that together with his co-applicants, they while conducting a search in respect of the properties of the deceased, namely, **Title No. Loc 3/Mukuria/10 and Loc 3/ Mukuria/681** for purposes of filing a succession cause, discovered that blood their brothers **Samuel Macharia, Fanuel Karanja Macharia and Willie Kimani Kamanga** had secretly filed a succession cause and had already partitioned land parcel **No. Loc 3/Mukuria/10**. He contended that the Petitioner failed to disclose in the proceedings before the CM's Court at Thika leading to the grant in respect of the estate of **Naomi Wambui Macharia** that the Applicants were also sons of the deceased and in any event did not obtain their consent. Moreover, that the said parcels of land are situate in Murang'a thus the Chief Magistrate's court, Thika lacked jurisdiction.
4. **Samuel Macharia Kamanga** filed his replying affidavit on 22nd July, 2015. He deposed that his mother, **Naomi Wambui**, was the first wife of his father, **Kamanga Ndiba** and that **Willie Kamanga and Fanuel Karanja** are his blood brothers while the Applicants herein are his step brothers being sons of the second wife of his father, **Beatrice Njeri**. He contended that during the distribution of his father's estate in **Succession Cause no. 290 of 1993 –Thika**, his mother was assigned land parcel **No. LOC 3/MUKURIA/681** where he and his mother lived. That for the purpose of their mother's succession cause No. 500 of 2009, his above mentioned brothers had no interest in the same as they had already been given **LOC 3/ MUKURIA/10** by their mother.
5. He deposed that he long settled on **LOC 3/MUKURIA/681** with his mother and that the Applicants also received a share as shown in the confirmed grant in Succession Cause number 290 of 1993-Thika and whose distribution could not be effected the administrator **Beatrice Njeri** passed on and thus the titles remain in his father's name. That upon the death of his mother her share was to devolve to him as his brothers already had their share. In conclusion he deposed that the Applicants had no stake in his mother's estate as they were properly provided for in their house as step-brothers, are not beneficiaries in the estate of **Naomi Wambui** and are intermeddlers. He therefore urged the Court to dismiss the Summons for revocation of grant.
6. **Julius Njuguna Macharia** a further affidavit disputing the matters deposed in the replying affidavit. He reiterated that the Applicants herein are children of **Naomi Wambui**, thus brothers to the Respondent and should inherit equally in the estate of their mother. He further stated that land parcel **No. Loc 3/Mukuria/10** is utilised by all his brothers. He concluded that as children of **Naomi Wambui**, they were entitled to participate in the proceedings in respect of her estate and as such, the grant was obtained fraudulently.
7. **Daniel Karanja Macharia**, a son of **Beatrice Njeri** filed an affidavit in support of summons for revocation of grant. He concurred with the Applicants' affidavits. He outlined the beneficiaries in each house.
8. The Summons for Revocation or Annulment of Grant was heard by way of *viva voce* evidence. **Julius Njuguna Macharia** testified as **PW1**. He testified that the **Samuel Macharia** the Respondent did not seek his consent and that of his brothers before filing the succession cause in respect of Naomi Wambui Macharia. He denied the Respondent's allegations that they are not brothers asserting that their biological mother is Naomi Wambui Macharia. In cross-examination by the Respondent, he reiterated that he is a brother to the Respondent and that the succession cause was filed without notice. He further stated that he was pursuing his mother's property and not his father's estate.

9. **Daniel Karanja Macharia** testified as **PW2**. He testified that the Respondent is his step-brother as his mother was Beatrice Njeri. He stated that he had no claim against the estate of **Naomi Wambui** but reiterated that the Applicants and the Respondent are brothers. In cross-examination by the Respondent, he stated that together with his brothers, they inherited their mother's portion of land given to her by their father. That the Respondent's mother also received the land currently occupied by the Respondent.

10. The Respondent, **Samuel Macharia Kamanga**, testified as **RW1**. He testified that the suit property belonged to his father and not his mother. He stated that all the beneficiaries got a share in the Thika succession cause in respect of their father and that the Applicants have been trying to evict him. In cross examination by Mr. Mithamo, he stated that the Applicants refused to sign papers in Succession Cause Number 500 of 2009-Thika. He contended that his brothers Fanuel Karanja and Willie Kamanga were given **LR LOC 3/ MUKURIA /10** while he occupies **LR Loc 3/ Mukuria / 681** and that the Applicants want to evict him therefrom. On being further pressed, he admitted that the applicants are his brothers and sons of Naomi Wambui and that he had disowned them for ganging up with the children of Beatrice Njeri in opposing him.

11. The court has considered all the matters canvassed in respect of the summons for revocation. The main grounds canvassed at the hearing are (b) and (c) in the summons which assert the concealment by the Respondent/Petitioner of the existence of three brothers who are the Applicants herein, and failure to obtain their consent prior to filing the succession cause relating to the deceased mother, **Naomi Wambui Macharia**. Section 76 of the Laws of Succession Act provides for instances when a grant may be revoked or nullified. These include instances where: -

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

(b) 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) 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.

12. There is no dispute that the Applicants and Petitioners are the sons of the late **Kimanga Ndiba** alias **Macharia Mauru** who had two wives, namely, **Beatrice Njeri Kimanga** and **Naomi Wambui Macharia**. Following his death, a **Succession Cause No.290 of 1993** was filed at the Chief Magistrate's Court at Thika. The estate comprised of five parcels of land, a market plot, shares and money in the bank. Under the confirmed grant (**annexure 1** to the Respondents Replying affidavit), Land parcels **No. LOC/Mukuria/677, 678, 679, 681** devolved upon his sons **Peter Mbugua Macharia, Julius Karehu Macharia, Kimemia Macharia** and wife **Naomi Wambui Macharia**, respectively.

13. The market plot identified as **No.6A Mukuria**, shares and money were to be shared equally by the widows. It seems that **Beatrice Njeri Kimanga alias Beatrice Njeri Macharia** the appointed administrator died before completing the distribution, and was soon after followed by **Naomi Wambui Macharia**. Thus in 2009 the Petitioner/Respondent with the consent of his brothers **Samuel Karanja Macharia**, and **Willie Kamanga Macharia** filed **Succession Cause No.500 of 2009** in the Chief Magistrate's Court at Thika but excluding the Applicants herein who assert to be the biological children of **Naomi Wambui Macharia**.

14. The properties comprising the estate of the latter widow are stated in the confirmed grant (**annexure 2**) to the Respondent/Petitioner's affidavit to be land parcels **No. LOC 3/Mukuria/10, 681** and **Plot 6A Mukuria Market**. Under the confirmed grant, the first parcel devolved upon **Willie Kimani Kimanga** and **Fanuel Karanja Kimanga** while the Petitioner/Respondent inherited the parcel **No.681**. **Willie Kimani Kimanga** was to inherit the **Mukuria Market Plot No. 6A**.

15. Although the parties expended a lot of energy before this court on their claims regarding distribution, the sole issue that will determine this application was whether the Applicants were children of **Naomi Wambui Macharia**. By their various affidavits and through their oral evidence the Applicants have asserted this to be the case. A letter from the Chief **Kibage location, Kandara** dated 5th March 2018 lists seven sons who include the disputants herein as the children of **Naomi Wambui Macharia**. An earlier letter from the assistant chief **Gacharage sublocation Kandara** (dated 11.12.2008) purported that the Petitioner/Respondent and his two brothers Willie and Daniel (Fanuel) were the only children of the deceased woman.

16. Despite evidence from the Applicants and his step brother, the Petitioner Respondent maintained in his evidence in chief that the Applicants were his step brothers and sons of Beatrice, his mother's co-wife. However, he was forced to concede during cross-examination that:

"I have said that my brothers Julius Njuguna Macharia, Peter Mbugua (Macharia), (Julius) Karehu and (Joseph) Kimemia are my blood brothers and sons of Naomi but I am now saying that they are like sons of the other wife because they ganged up with the sons of Beatrice against me."

17. This admission in my view settles the question once and for all. It appears that by excluding the Applicants in the Succession Cause in respect of Naomi, the Petitioner/Respondent's main motivation was to ensure that he alone inherited the portion that Naomi had received in the Succession proceedings in respect of her husband. The deceased mother died possessed of three identifiable land parcels. Distribution will be determined by the court at the time of the confirmation of the grant. For now, it is ineluctable that the grant issued to the Petitioner/Respondent was obtained through the fraudulent concealment of the existence of the Applicants as persons who survived the deceased and, further, the proceedings were brought without seeking their consent. Therefore, the said grant as later confirmed cannot be allowed to stand. The grant issued and confirmed in **Thika Succession Cause No. 500 of 2009** is hereby revoked.

18. In view of the above, and the age of this dispute, the court hereby appoints **Julius Njuguna Macharia, Peter Mbugua Macharia, Samuel Macharia Kamanga** and **Willie Kimani Kamanga** as the administrators of the estate of **Naomi Wambui Macharia**. The court

further directs that the administrators, or any one or several of them do file the summons for confirmation of grant within 60 days of today's date so that distribution can be effected. Further, in view of the fact that the all the assets of the estate are located in Murang'a, the court hereby removes this cause to the registry of the High Court at Murang'a for final disposal. The parties will bear own costs.

DELIVERED AND SIGNED AT KIAMBU THIS 30TH DAY OF APRIL 2019

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C. MEOLI

JUDGE

In The Presence of:-

Applicants

Respondents

Court Assistant - Kevin