



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

SUCCESSION CAUSE NO. 351 OF 2004

IN THE MATTER OF THE ESTATE OF KIRAMUNYA M'IMULA (DECEASED)

CIOMATAU M'IMUKA.....PETITIONER

VS

CHARLES GITONGA KIRAMUNYA....OBJECTOR

JUDGMENT

[1] **KIRAMUNYA M'IMULA** ("the deceased") died on 10th May, 1990. According to the petition, (1) the deceased was survived by Ciomatau M'Imula, David Kibwi M'Imula and Isaiah Iruki M'Imula; and (2) his estate comprised in **Njia/Buri/E-Ruri/2828** ("the Suit Land").

[2] A grant of letters of administration was issued to the petitioner on 27th October 2004 and confirmed on 4th December 2006. Thereafter, the objector filed a Summons dated 6th June 2007 for revocation of said grant under **Section 76 of the Law of Succession Act, Rule 44 of the Probate and Administration Rules** and **Section 128 of the Registered Land Act CAP 300**.

[3] The grounds upon which the application is premised are stated in the application and the supporting affidavit of Charles Gitonga Kiramunya sworn on 6th June 2007 to be:-.

(1) That prior to the filing of these proceedings, the petitioner who is the mother of the deceased chased them away from their home.

(2) That thereafter, the petitioner secretly filed these proceedings and had the suit land transferred into her name.

(3) That she also falsely and fraudulently presented herself and her sons as the only dependants of the deceased, thus, disinheriting the objector and his siblings of their father's land;

(4) That the deceased was survived by his three children: Charles Gitonga Kiramunya, Christine Muthoni Kiramunya and Christopher Thurania (deceased).

[4] The application was opposed by the petitioner vide her replying affidavit dated 11th October 2007. She averred that it is not true that the objector is the son of the deceased, for the deceased died with any wife or child. Besides, the Suit Land was ancestral land which was registered in the name of the deceased to hold in trust for her and his brothers.

[5] This matter was heard vide *viva voce* evidence. **OW1 Charles Gitonga Kiramunya** reiterated what he had asserted. **OW2 M'Ngui M'Mura** step-brother of the deceased confirmed that the deceased had three children who were chased away after the death of the deceased and his wife. Their houses on the land were demolished as well. He affirmed that the Suit Land belongs to the deceased and should go to his children.

[6] **OW3 Esther Thuuru** stated that the deceased was married to her daughter Jerusha Gomana. Her daughter and the deceased had three children who were chased away after the death of the deceased. When her daughter died she was buried on the Suit land as well as the deceased and Christopher Kiramunya, deceased's son.

[7] At the close of the objector's case the petitioner gave a sworn testimony and called one witnesses. **PW1 Rebecca Gatamau M'Mura** mother of the deceased reiterated what she had avowed. She added that she does not know who Jerusha, objector, Christine and Christopher Kiramura are since the deceased was not married neither did he have any issues. She affirmed that there was no house on the Suit Land and that the occupants of it are her sons David Kubui and Isaiah. She disagreed that there are three burial sites as there is only one for the deceased.

[8] **PW2 Isaiah Kiruki M’Imula** brother of the deceased he asserted that the deceased had no wife or children. That the petitioner never stayed on the land and neither is the said Jerusha and Christopher buried on the Suit Land. That the only two people buried there are the deceased and his brother’s son Gikundi Kibui.

[9] This matter was canvassed by way of written submissions. The objector submitted that the grant confirmed to the petitioner should be revoked and grant of representation be made and confirmed to the applicant and share the deceased estate with her sister as they are children of the deceased. The petitioner submitted that the objector has not proved his case and pray that the objection be dismissed.

ANALYSIS AND DETERMINATION

[10] I have been asked to do three inextricable things; (1) revoke the grant issued and confirmed to the petitioner; (2) make a fresh grant to the objector; and (3) distribute the estate and confirm the latter grant.

Revocation of grant

[11] Has the Objector established one or more of the grounds stated in section 76 of the Law of Succession Act which warrant revocation and or annulment of the grant herein? According to the objector, the petitioner filed the cause secretly and by concealing material facts to the court. He stated that the petitioner concealed to the court that the deceased was survived by his children.

[12] Paternity of beneficiaries also became an issue. To resolve this dilemma created by the parties herein, the court resorted to advanced medical science and technology for help and ordered DNA testing to be conducted on the persons concerned. See ruling dated 16th October 2017. The DNA report by the government chemist dated 29th October 2018 was filed in court. Its findings were that there are more chances that Christine Muthoni Kiramunya is a biological granddaughter of Ciomatau M’imula and a biological niece of David Kibui. Charles was excluded as a biological grandson or nephew. Consequently, I find that Christine Gitonga is a daughter of the deceased.

[13] That being the case, the petition is deficient in law as it did not include her as a dependant. Notable from the material before court is that the petitioner was aware that the deceased had children but she chose to conceal that fact from the court. Again, in law, Christine is a beneficiary and in her position, a person with priority to apply for letters of administration of the estate of the deceased. See **Section 66 of the Law of Succession Act, Rule 7 (7) and 26 of the Probate and Administration Rules**. The mother and brothers of the deceased rank lower. In fact, such should show that they had been maintained by the deceased immediately prior to his death. See **Section 29 of the Law of Succession Act which** states:

“For the purposes of this Part, "dependant" means—

...

(b) such of the deceased’s parents, step-parents, grand-parents, grandchildren, step-children, children whom the deceased had taken into his family as his own, brothers and sisters, and half-brothers and half-sisters, as were being maintained by the deceased immediately prior to his death;...

...”

[14] Accordingly the grant made to the petitioner is a perfect candidate for revocation.

Claim that land is ancestral land

[15] I however note that the petitioner is saying in her submissions that the Suit Land is ancestral land which was gathered by the deceased to hold in trust for his mother and other family members. She claimed that they are therefore entitled to the land. Thus she proposed the suit land to be distributed equally between the petitioner and her sons with Christine representing the deceased.

[16] I hold the view that the claim that the Suit Land is ancestral land and therefore the deceased held it in trust for all the family members is not a matter within the domain of this court. Accordingly, since the Suit Land is registered under the name of the deceased it is the estate property.

Orders

[17] I have identified the rightful beneficiaries of the estate. I have also found that the grant herein is a perfect candidate for revocation. I am now ready to make appropriate orders and also discharge one of the core functions of this court: to distribute the estate of the deceased.. On this refer to **In re Estate of Alice Mumbua Mutua (Deceased) [2017]eKLR**. Accordingly, I order:

a) That the grant of letters of administration which were issued to Ciomatau M’Imula on 27th October 2004 and confirmed on 4th December 2006 is revoked

b) Fresh grant of letters of administration intestate is issued to Christine Muthoni Kiramunya.

c) The said grant in (b) is confirmed and the estate be distributed as follows:

Land Parcel Njia/Buri/E-Ruri/2828

Christine Muthoni Kiramunya - wholly

Dated, signed and delivered at Meru on 29th April, 2019.

.....

F. GIKONYO

JUDGE

In presence of

Nyenyire for Mburugu for objector

Ngugi for Ondieki for petitioner

F. GIKONYO

JUDGE