



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
SUCCESSION CAUSE NO. 171 OF 2016
IN THE MATTER OF THE ESTATE OF THE LATE
DANSON KIBE KAMAU ALIAS DANSON KAMAU EVANS (DECEASED)
CECILIA NDUTA KIBE.....APPLICANT
VERSUS
EVANSON GATHAMA KAMAU.....RESPONDENT
RULING

1. The deceased **Danson Kibe Kamau Alias Danson Kamau Evans** (deceased) died on the 4th April 2009 at Naivasha District Hospital. On the 30th December 2010 the Respondent **Evanson Gathama Kamau(deceased)** and **Grace Njoki Ngugi** petitioned for grant of letters of administration intestate in the SPM's Court at Limuru in Succession Cause No. 179 of 2010. The affidavit in support of the petition states that the deceased died intestate and left the following surviving him; **Grace Njoki Ngugi (widow- deceased), Evanson Gathama Kamau (son), Florence Mumbi Njoki (daughter), Simon Kabunyi Njoki (son) and Owen Ngugi Njoki (son)**. A grant of letter of administration intestate was issued on the **29thFebruary 2011**. The said grant was confirmed and a Certificate of Confirmation of the Grant was issued on the **13th September 2012**. The estate of the deceased comprised the following properties/assets; **Kijabe/Kijabe Block 1/6139, Plot No. 114 Ngomongo Development Co-Ltd Certificate No. 119 and parcel number Dagoretti/Kangemi/S.66 Ltd.**

2. On the 1st February 2016 **Cecilia Nduta Kibe** filed a Summons brought under Section 26,45,49,71(c) & (d), 72, 76 (a), (b) & (c) and 95 of the Laws of Succession Act and Rules 7 (1), 44 (1), 49, 64 and 73 of the Probate & Administration Rules seeking the following orders;

i. That pending the hearing and determination of the application an order of injunction do issue restraining the Respondent his agents servant or representatives from selling, transferring, charging or in any way interfering with the following properties;

a.Kijabe/Kijabe Block 1/6139,

b. Plot No. 114 Ngomongo Development Co-Ltd

c. 40% share of Title No. Dagoretti/Kangemi/S.66 Ltd.

ii. That the Grant of letters of administration intestate issued to the Respondent and his late mother **Grace Njoki Ngugi** on the 23rd February 2011 be revoked.

iii. That the Certificate of Confirmation of Grant issued on the 13th September 2012 to the Respondent be revoked

iv. That the Court do cancel or revoke all transfers which arose following the issuance of the Certificate of Confirmation of Grant to the following properties;

a.Kijabe/Kijabe Block 1/6139,

b. Plot No. 114 Ngomongo Development Co-Ltd

c. 40% share of Title No. Dagoretti/Kangemi/S.66 Ltd.

v. That the costs of the Application be paid out of the Estate.

3. The Applicant filed the following affidavits in support of her application; affidavits dated the **11/1/2016,11/10/2016**, the affidavit of George Mwaura Evans (the Applicant's uncle) dated **11/10/2016**, the affidavit of Cecilia Nduta Kamau (the Applicant's grandmother) dated the 11th October 2016 and a statement filed on the 19th December 2016. The applicant contends that the deceased was her father. The deceased married her mother Jane Njeri (Jane now deceased) and they had three issues herself, Evans Kamau Danson and Hannah Wanjiku Danson. In the course of the years the deceased married Grace Njoki the mother of the Respondent and separated from Jane with her children but he continued to support them after the passing on of their mother. That when the deceased became ill the Applicant and her siblings were denied access to their father by their step mother, they were also not allowed to attend his funeral by their step mother. That the Applicant and her sick brother have been getting assistance from their aging grandmother. That they were informed of their father's share in rental properties which he inherited from his father. Part of the said property belongs to her grandmother Cecilia Nduta Kamau. That her father's family recognise them as the children of the deceased. That the Respondent did not inform them when they began the process of obtaining the Grant of Letters of Administration Intestate. That the Respondent omitted their names from the list of survivors in a bid to disinherit them. That the grant was obtained by making of a false statement or concealment of material facts from the Court. That the Respondent knew of the existence of their family. That in November 2010 at a family meeting it was resolved that their father's assets be distributed amongst his children and surviving wife. According to the Applicant's uncle the Applicant and her siblings are children of the deceased and are entitled to inherit from the deceased's estate. He testified that he made efforts to have the family discuss the matter. The Applicant seeks to be included as child of the deceased in the distribution of the estate.

4. The Respondent/ administrator filed affidavits dated the, **20th May 2016, 7th November 2016** and the affidavit of Geoffrey Evans Wainaina dated the **20th May 2016**. The Respondent in his affidavits and evidence states as follows; that he filed the Succession Cause No.179 of 2010 at Limuru Court in a proper and legal manner. The deceased had only one wife his late mother Grace Njoki Ngugi and they lived as a monogamous family in Maai-Maui location. He became aware of the existence of the Applicant's family in 2015 after his uncle George Mwaura Evans brought them in the picture. That it is not true that they made a false statement or concealed material facts as alleged. That he has been told by his uncle Geoffrey Wainaina that the purported 1st wife Jane Njeri had a brief liaison with his late father and had two issues namely Cecilia Nduta Danson Kibe and Evans Kamau Kibe Danson. That the said Jane Njeri left married another man and whom they had Hannah Wanjiku. That the letter attached by the Applicant from the Chief at Kangemi is a false document. That his father did not support the Applicant and her siblings during her life time and that the Applicant and her siblings abandoned their late father to be with their late mother and her husband. None of them buried their father. That he attended the meeting of 20th November 2010 and as the secretary he knows that there was no resolution that was made about distribution of his father's estate. That the Applicant has not proved that she is the child of the deceased. That his Uncle George is intermeddling with the deceased's property and wants to take away his father's property.

5. Parties testified in court, they adopted their affidavits and were cross-examined. They filed written submissions. The Applicant in her submissions raised 4 issues for determination as follows;

- i. whether the Applicant is the child of the deceased and if so is she a dependant recognised in law?
- ii. Whether the Applicant's siblings are also children of the deceased?
- iii. Whether the Grant of Letters of Administration Intestate was obtained fraudulently following the omission of the Applicant and her siblings from the Petition by the Administrator and his mother?
- vi. Whether the Applicant is entitled to any share of the estate of the deceased?

It was submitted that the Applicant is the oldest child of the deceased her mother Jane Njeri was the deceased's first wife. That the Respondent admitted that his uncle Geoffrey informed him of the relationship between his father and Jane Njeri which resulted in the Applicant and her brother Evans Kamau. That the Applicant is child of the deceased as per section 3 (5) of the Law of Succession Act Cap 160 (the Act) and is therefore a dependant under section 29 (a) of the Act. That the Applicant's siblings are also the deceased's children and all should be considered as his dependants as per Section 29 (a) of the Act. It was further submitted that the Respondent and his mother omitted the Applicant and her siblings from the Petition for Grant of Letters of Administration, despite knowing of their existence. That the deliberate omission was aimed at misleading the issuing Court that there were no other beneficiaries or survivors of the estate of the deceased, therefore the grant should be revoked. That the Applicant as a child of the deceased is entitled to participate or inherit part of the estate unless they renounce their interest. That Section 40 of the Act provides for instances where intestate was polygamous. That in this case the court will consider the house of Jane Njeri and Grace Njoki. That there should be no discrimination in regard to inheritance matters as long as they are all the deceased's children. That the deceased died in 2009 during the pendency of the Law of Succession Act and it is the only applicable law as per Sections 26, 29 and 38. That the grant should be revoked as the Respondent and his mother concealed the existence of the Applicant's family who are children of the deceased.

6. The Respondent submitted as follows; that he followed the due process in law in obtaining the grant and later confirmation of the said grant. The process took place with the full knowledge of the family members including the Applicant's witness Uncle George Mwaura. That the Applicant has not produced a birth certificate or Identity Card to prove the deceased was her father or that Jane Njeri was her mother, thus she has concealed her true identity. That she did not prove that her mother was married to the deceased, thus she is a total stranger to the estate. On whether she is a beneficiary or dependant of the estate it was submitted that the Applicant has failed to prove that she is a beneficiary or dependant of the estate of the deceased as provided under Section 29 of the Act. He relied on the case of **re Estate of Martin Luther Awour (Deceased) [2018] eKLR** where the Court held that, "The applicant must establish paternity through demonstrating that her mother and the deceased had a close relationship which provided opportunity for sexual contact that would have led to her conception, or alternatively, apply for deoxyribonucleic acid (DNA) test to be carried out. The test can be done with samples from the deceased's remains, and that may require exhumation, or from samples from the deceased's biological children".

It was further submitted that the Applicant had failed to establish that her mother was married to his father and that his father was polygamous and that there was a traditional marriage between her mother and his father or that they were a long cohabitation between her mother and his father. That the Applicant and her siblings were not involved in the life of the deceased nor did they attend his burial. On whether the grants should be revoked, it was submitted that the respondent presented all the material facts and followed the legal procedure

in the probate process. The deceased's last known place of residence was at Maai-Mahiu location and not Kangemi location and that the Applicant should have approached the Maai-Mahiu sub county administrator for a letter and not Kangemi. That the action taken by the Applicant coming to court 6 years later after confirmation of the grant is an afterthought. That there is no merit in the application and it should be dismissed.

DETERMINATION

7. I have considered the evidence adduced, the rival submissions and the law. The issues for determination are;

- i. Whether the Applicant and her siblings were children and beneficiaries/ dependents of the deceased
- ii. Whether the application to revoke the grants should be allowed

i. Whether the Applicant is the child of the deceased and beneficiaries/ dependents of the deceased?

The Applicant contends that she is the daughter of the deceased together with her siblings. Her mother was Jane Njeri. The Respondent contends that she is not the daughter of the deceased and that he got to know of the Applicant's family in 2015. In determining whether the Applicant was the deceased's child I have considered the evidence adduced by the parties noting that as each case is decided on its own facts. The Applicant to corroborate her evidence called her uncle George Mwaura Evans who testified that the Applicant's mother was the deceased's first wife and that they had two children the Applicant and Evans Kamau Kibe Danson. Though the Respondent claims that he got to know of the Applicant in 2015, he acknowledged in his affidavit dated 20th May 2016 that the Applicant was a child of the deceased. At paragraph 5 of the said affidavit he avers as follows;

"I am informed by my uncle Geoffrey Wainaina which information I verily believe to be true that the purported 1st wife, one Jane Njeri had a brief liaison with my deceased father and had two issues namely Cecilia Nduta Danson Kibe and Evans Kamau Danson. The said Jane Njeri left with the issues and married another man with whom she they had Hannah Wanjiku, it is not true as alleged in paragraph 6 of Cecilia's affidavit that Hannah Wanjiku is my father's daughter".

In this paragraph the Respondent acknowledges that he believes the information given to him by his Uncle Geoffrey Wainaina. This statement supports the Applicant's evidence and that of their uncle George Mwaura Evans. In my view the Applicant's evidence is sufficient to prove she was a child of the deceased and her brother Evans whom he sired with one Jane Njeri. In light of the evidence adduced there was no need for the Applicant to produce an Identity card, or undergo a DNA. The words of the 2 uncles establish that the deceased had a relationship with Jane Njeri with whom they had 2 children. Having found that the Applicant and Evans her brother are children of the deceased they are therefore dependants of the deceased's estate. Section 29 (a) of the Act provides as follows;

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

(a) the wife or wives, or former wife or wives, and the children of the deceased whether or not maintained by the deceased immediately prior to his death;

8. Whether the application to revoke the grant should be allowed?

It is evident that the Respondent and his late mother failed to include the Applicant and her brother in the petition for grant of letters of administration. There is evidence that in November 2010 there was meeting held over the estate of the deceased. This meeting happened before the grant was confirmed. I find that there was concealment of a material fact that the deceased had other children. Under Section 76 of the Act the court has the discretion to revoke a grant it provides, "***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***". After considering the evidence adduced what the Applicant seeks is that they should be recognised as children of the deceased and that they should be given a portion of the deceased's estate. Section 26 empowers the court to provide for a dependant who is not provided for. Taking into account the length of time this matter has taken in Court it is my view that revoking the grant is not in the best interests of the parties. I therefore decline to revoke the grant dated the 23rd February 2011.

9. From the evidence adduced the estate of the deceased comprises the following properties; parcel no. Kijabe/Kijabe/1/6139, Plot No. Ngomongo Development Company Limited and 40% share of Title Number Dagoretti/ Kangemi/ S.66. The Certificate of Confirmation of Grant dated the 13th September 2012, parcel no. Kijabe/Kijabe Block 1/6139 was inherited by the Respondent and his siblings in equal shares. Florence Mumbi Njoki got the Ngomongo Development Co.Ltd certificate no.119 and Cecilia Nduta Kamau got 60% of Dagoretti/ Kangemi/S. 66 and the Respondent got 40%. The Applicant seeks a portion of the estate, after evaluating the evidence I am of the view that the Respondent and his siblings shall retain the property in Kijabe/Kijabe/1/6139 and the Plot 114 in Ngomongo. The applicant and her sibling Evans Danson are entitled to a share of the estate. They shall inherit 15% out of the 40% share of the Respondent in Dagoretti/Kangemi/S.66 Ltd. The Respondent shall ensure that the said 15% is transferred to the Applicant and Evans Danson as their share of the deceased's estate. The certificate of confirmation of grant issued on the 13th of September 2012 is revoked and a fresh one shall issue as follows;

i. Title Number Kijabe/Kijabe Block 1/6139 shall be inherited by Evanson Gathama Kamau, Florence Mumbi Njoki, Simon Kabunyi Njoki and Owen Ngugi Njoki in equal shares. The shares in Plot No. 114 Ngomongo Development Co-Ltd Certificate No.119 shall go to Florence Mumbi Njoki. Cecilia Nduta Kamau shall get 60% of Dagoretti/ Kangemi/S.66 Ltd. Cecilia Nduta Kibe shall get 15% of Dagoretti/Kangemi/S.66 and Evanson Gathama Kamau shall get 25% of Dagoretti/Kangemi/S.66.

Final Orders:

1. The Applicant **Cecilia Nduta Njeri Danson** and **Evan Kamau Danson** are children of the deceased **Danson Kibe Kamau** and are entitled to inherit from his estate.
2. The grant dated the 23rd February 2011 shall not be revoked.
3. The Certificate of Confirmation of Grant issued on the 13th September 2012 to the Respondent is revoked. A fresh Certificate of Confirmation of Grant shall issue as follows;

a. Title Number Kijabe/Kijabe Block 1/6139 shall be inherited by Evanson Gathama Kamau, Florence Mumbi Njoki, Simon Kabunyi Njoki and Owen Ngugi Njoki in equal shares.

b. The shares in Plot No. 114 Ngomomgo Development Co-Ltd Certificate No.119 shall go to Florence Mumbi Njoki.

c. Cecilia Nduta Kamau shall get 60% of Dagoretti/ Kangemi/S.66 Ltd. Cecilia Nduta Kibe and Evans Kamau Danson shall get 15% of Dagoretti/Kangemi/S.66 and Evanson Gathama Kamau shall get 25% of Dagoretti/Kangemi/S.66.

4. Since this is a family matter each party shall bear their own costs.

Dated signed and delivered at Nairobi this 23rd day of May 2019

R.E.OUGO

JUDGE

In the presence of;

Mrs Kabuthi for the Applicant

Respondent In person

Mercy Court clerk