



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MURANG'A

SUCCESSION CAUSE NO. 252 OF 2015

RE ESTATE OF AGNES NJERI GACHUCHA (DECEASED)

GEORGE MUCHIRI CHEGE.....1ST APPLICANT

JIDRAPH MURIGI GITAU.....2ND APPLICANT

VERSUS

PAUL KIRIGWI KAMAU.....RESPONDENT

RULING

1. Agnes Njeri Gachucha (hereafter *the deceased*) died *intestate* on 3rd March 1998. A grant of letters of administration was issued by the Resident Magistrates Court at Thika on 3rd January 2013. The grant was confirmed on 24th January 2014.
2. That grant was made to Paul Kirigwi Kamau (hereafter *the respondent*) who claimed to be her *son*. The only other beneficiaries disclosed were two daughters: Jane Wambui Kirigwi; and, Mary Wanjiku Macharia.
3. The only asset seems to be land known as *Kakuzi/Kirimiri/Block 9/479* (hereafter *the suit property*). Under the confirmed grant the property was to be shared between the respondent and his two “sisters” named above.
4. The applicants aver that the grant was obtained by *fraud*. They filed summons for revocation of the grant on 14th April 2014 at the High Court. The pith of the objection is that the petitioner concealed the fact that the applicants *bought* the suit land from the deceased long before her death. They also contend that the petitioner misled the court he was a *son* of the deceased. They aver that he omitted the *biological son* known as Ngugi Nyoike; and, that he used *forged* letters from the area chief to obtain the grant.
5. I recorded *viva voce* evidence. The respondent was served but failed to appear. An affidavit of service sworn by Amos Kanoga, a process server, was filed on 3rd June 2019.
6. From the evidence of Jidraph Murigi (PW1) and documents produced in court the following facts emerge: By a written sale agreement dated 6th October 1990 (exhibit 1), the deceased sold one acre of the suit property to the 1st applicant. The consideration was Kshs 11,000. The 1st applicant paid Kshs 10,500 and was granted possession. He has developed the land and built a permanent house on it.
7. There is another written sale agreement for one acre to the 2nd applicant dated 11th January 1997. He has put up a stone house on the land. He took possession before the death of the deceased.
8. Although the parties appeared before the Land Control Board, the transfer could not be completed because the land had not been subdivided between the joint proprietors.
9. I thus readily find that the two applicants became *creditors* of the estate which fact was *not* disclosed in the petition before the lower court.
10. But there is another matter: The search annexed to the summons shows that the suit property measures approximately 1.613 hectares. It is registered *jointly* between the deceased and another person, *Margaret Wangui Mwangi*. That fact was also not disclosed.
11. It would appear that the respondent was a *son in law* of the deceased but he projected himself as the biological son. Furthermore there is a letter from the Assistant Chief Gituamba Sub-location dated 18th January 2016 (exhibit 2). He denies the authenticity of an earlier letter from his office attached to the application for letters of administration by the respondent.

12. I have reached the inescapable conclusion that the respondent did *not* rank in priority. He also *concealed* the fact of sale of the suit property; and, has gone ahead to sell the land to defeat the claim by the applicants.

13. My final orders are as follows.

i) I hereby *revoke* the grant issued on 10th January 2013 and confirmed on 28th January 2014 in Thika Magistrates Court Succession Cause Number 530 of 2012.

ii) A fresh grant shall be applied for at the High Court by a person ranking in priority and as provided by the ***Probate and Administration Rules***. The petition shall note the interests of any *creditors* to the estate including the two applicants.

iii) That in order to avoid the interests of justice from being defeated, and pending the filing of the fresh petition, I hereby issue an order *preserving* the estate of the deceased and *prohibiting* any further dealings with the land known as *Kakuzi/Kirimiri/Block 9/479*.

iv) That there shall be *no* order on costs.

It is so ordered.

DATED, SIGNED and DELIVERED at MURANG'A this 25th day of June 2019.

KANYI KIMONDO

JUDGE

Ruling read in open court in the presence of:

Applicants (in person).

In the absence of the respondent.

Ms. Dorcas and Ms. Elizabeth, Court Clerks.