



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

SUCCESSION CAUSE NO. 152 OF 1993

IN THE MATTER OF THE ESTATE OF GEDION

RIMBERE ALIAS GEDION M'RIMBERE (DECEASED)

CHARLES KIRIINYA RIMBEREPETITIONER

VERSUS

CATHERINE MWARI MUREITHI.....APPLICANT

JUDGMENT

[1] In a partial ruling delivered on 20th May 2019 on Summons for revocation of Grant application dated 23rd November 2018 this court stated that

“One other thing; the estate was distributed a long time ago and much may have passed under the bridge. The court needs to understand how the estate of the deceased has been dealt with for all those years including the placement of the beneficiaries on the ground. These matters are necessary in this case if justice is to be done. In light thereof, I direct the petitioner to file in 14 days final account on the administration of the estate stating clearly the status of the placement of the beneficiaries on the estate.”

I will now embark to determine the application for revocation of grant and distribution of the estate.

[2] The summons dated 23rd November 2018 were brought under **Section 47 and 76 of the Law of Succession Act, Rules 44, 49 and 73 of the Probate and Administration Rules, Section 68 and 69 of the Registered Land Act 2012 and all other enabling provisions of the law.** The applicant is seeking among other orders, the revocation and/or annulment of the grant of letters of administration intestate issued and confirmed to Charles Kiriinya Rimberere on 17th June 1996 and or as amended on 16th November 2015.

[3] The application is supported by the grounds on the face of it and the affidavit of Catherine Mwari sworn on 23rd November 2018. With the authority to appear, plead and act for her four sisters the applicants stated that revocation and or annulment of the grant will enable equitable distribution and sharing of the estate. It is contended that the grant was obtained secretly and fraudulently, as none of the daughters of the deceased was involved in the process, their consent was not obtained neither were they provided for.

[4] Charles Kiriinya Rimberere opposed the application through his replying and further replying affidavit sworn on 14th December 2018 and 29th January 2019 respectively. He deposed that after the death of the deceased the family members met several times and discussed distribution of the estate where each house was allocated their share. All the children and beneficiaries of the deceased were informed and that the applicant gave her consent before an advocate.

[5] He stated that, at the time, it was understood and agreed that since the daughters were married they were not entitled to inherit real property and that is why they only got a share of the money in the bank. At that time the position was that married daughters were not entitled to inherit as per customary law. In any case, he took the view that administration of the estate is complete and disturbing the status quo will be unfair and unjust.

[6] Catherine Mwari Mureithi refuted the assertions by the Petitioner. She averred in her supplementary and 2nd Supplementary Affidavits sworn on 18th December 2018 and 21st March 2019 respectively that at no one point did the daughters attend any meeting to discuss distribution of the estate of the deceased. She also denied appending her signature before any advocate. According to her, none of the daughters denounced their inheritance and as such the distribution of the estate in the manner done herein is not fair. She accused the petitioner of exploiting his role as administrator and has not explained why distribution of the estate is not complete to date.

Submissions

[7] This matter was canvassed by way of written submissions. The applicant submitted that they have met the threshold laid down in Section 76 of CAP 160 to warrant the revocation of the grant. She relied on several authorities including **In the Matter of the Estate of Elizabeth Wanjiku Munge (Deceased) [2015] eKLR.**

[8] On the other hand, the petitioner submitted that the reasons given for revocation are not true and the application is an abuse of the process of the court.

Analysis and determination

[9] I have carefully perused through the application, affidavits, submissions and the record. Arising therefrom are the following issues for determination:-

a. Whether to revoke/annul the confirmed grant?

b. If (a) above is in the affirmative, how should the estate of the deceased be distributed?

Revocation of Grant

[10] Revocation and annulment of grant is governed by **Section 76 of the Law of Succession Act** which provides;

76. Revocation or annulment of grant

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—

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

(b) That 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) That 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;

(d) That the person to whom the grant was made has failed, after due notice and without reasonable cause either—

(i) To apply for confirmation of the grant within one year from the date thereof, or such longer period as the court order or allow; or

(ii) To proceed diligently with the administration of the estate; or

(iii) To produce to the court, within the time prescribed, any such inventory or account of administration as is required by the provisions of paragraphs (e) and (g) of section 83 or has produced any such inventory or account which is false in any material particular; or

(e) That the grant has become useless and inoperative through subsequent circumstances.

[11] It was the applicant's argument that the petitioner obtained the grant secretly and fraudulently by making of a false statement or by the concealment from the court of material facts that were essential. According to the applicant, the petitioner did not involve any of the daughters of the deceased and he did not give them a share of the estate. The petitioner denied these claims and stated that they were all aware and at the time daughters were not allowed to inherit as per the custom.

[12] The last argument by the petitioner throws me to two important matters; (1) application of the Law of Succession Act; and (2) discrimination of daughters in inheritance under customary law. The deceased herein died on 25th September 1989 and accordingly the applicable law in this estate is the **Law of Succession Act** which commenced on 1st July 1981. Consequently, Meru Customary Law does not apply but the Law of Succession Act takes Precedence. In his own words and admission, the Petitioner confirmed that none of the daughters received an inch of real property courtesy of Meru Customary law. This smirks of prohibited discrimination.

On this subject I have stated in previous works of the court and I will state it again that from the arguments coming through, it is clear issues to do with discrimination based on gender and sex have emerged. There were bad times in the heavily patriarchal African society; that being born as daughter disinherited you. Even the judicial journey to liberate daughters from being down-trodden by the patriarchal society in Kenya on matters of inheritance has been long and painful. As a matter of fact, before 2010, we only saw pin-prick thrusts and rapier-like strokes by courts on these persistent and obnoxious patriarchal biases. But, things changed when *RONO vs. RONO* [2008] 1 KLR 803 delivered a downright bludgeon-blow on these discriminatory practices against women in inheritance; it splendidly paid deference to the international instruments on elimination of all forms of discrimination against women especially the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). And, I am happy that today there are many cases- and the number is rising by the day as courts implement the Constitution- which state categorically that discrimination in inheritance on the basis of gender or sex or status is prohibited discrimination in law and the Constitution. More specifically I am content to cite the proclamation by the Court of Appeal in the case of *STEPHEN GITONGA M'MURITHI vs. FAITH NGIRA MURITHI* [2015] eKLR that:-

“Section 38 enshrines the principle of equal distribution of the net intestate estate to the surviving children of the deceased irrespective of gender and whether married and comfortable in their marriage or unmarried...”

[13] Therefore, a son will not have priority over a daughter of the deceased simply because he is male; all- male and female siblings- and not all of a particular gender, but all, are equal before the law and are entitled to equal protection of the law. See article 27 of the Constitution. Accordingly, in so far as the grant herein was procured through discrimination of daughters, it is a perfect candidate for revocation.

[14] I will consider also the other claim that the Petitioner has not diligently administered the estate. This is equally a potent ground for revocation of grant. What do the facts herein portend?

[15] This court on 20th May 2019 directed the petitioner to file a final account on the administration of the estate of the deceased. He duly filed the accounts on 29th May 2019. Several matters came to light; the property known as Narok Ranch Laikipia was to be shared equally by Geoffrey Mugambi, Robert Bundi and Stephen Mwititi according to the confirmed Grant. However, a search produced (marked CM8) by the applicant of the said parcel, Laikipia/Sosion/Sosion Block 2/8752 the parcel is registered under the name of the petitioner. Ntima/Ntakira/3 has already been subdivided into seven plots some of which have been disposed of. KIIRUA/NAARI/5 is still registered in the name of the deceased herein. The petitioner also stated that the proceeds from the sale of NTIMA/IGOKI/2479 were given to Catherine Mwari, Edith Mwendwa and Harriet. The applicant denied this claim and stated that they never received any monies.

[16] The above analysis clearly shows that the petitioner failed to administer the estate of the deceased diligently and in accordance with the grant. This combined with the fact that there was concealment of facts, I am satisfied the conditions for revocation of grant have been met. Consequently I hereby revoke the grant that was issued on 17th June 1996. Accordingly, in exercise of my final discretion under section 66 of the Act, I issue fresh grant of letters of administration to – Catherine Mwari Murethi and Charles Kirinya Rimbere.

Distribution

[17] Turning to the issue on distribution, I must first determine the dependents and the properties of the deceased. According to a letter by the Chief of Kiirua dated 26th July 1990 the deceased was survived by the following

- a. Charles Kiriinya - Son
- b. Robert Bundi - Son
- c. Geoffrey Mugambi - Son
- d. Stephen Mwititi - Son
- e. Elizabeth Ncurubi - Daughter
- f. Lillian Nkatha - Daughter
- g. Edith Mwendwa - Daughter
- h. Harriet Ntinyari - Daughter
- i. Catherine Mwari - Daughter

The following properties make up the estate of the deceased;

- a. Standard Bank Meru current account 0100110259008
- b. Standard Bank Meru Savings account 0120115837002
- c. Land Parcel Ntima/ Ntakira/3 – 8 acres
- d. Land parcel Kiirua/Naari/5 – 12 acres
- e. Land Parcel Kinoru/ Ntima/ Igoki/2479
- f. Land Parcel Narock Ranch – New settlement
- g. Plot Meru Municipal B/11/32
- h. Thege market 6A
- i. Kiirua Market 38A

[18] As only children survives, Section 38 of the Law of Succession Act is relevant. It provides;

“Where an intestate has left a surviving child or children but no spouse, the net intestate estate shall, subject to the provisions of sections 41 and 42, devolve upon the surviving child, if there be only one, or shall be equally divided among the surviving children.”

[19] I will strive to attain equity in light of the facts of the case and order **the estate of the deceased shall be distributed as follows**

A. NTIMA/NTAKIRA/3 – CHARLES KIRIINYA RIMBERE

B. KIIRUA/NAARI/5 - ELIZABETH NCURUBI to be shared equally among:-

- LILLIAN NKATHA
- EDITH MWENDWA
- HARRIET NTINYARI
- CATHERINE MWARI

C. NTIMA/IGOKI/2479 - VICTOR PAUL

D. LAIKIPIA/SOSION/SOSION BLOCK 2/8752 – CATHERINE MWARI

E. MERU MUNICIPAL B 11/32

BLOCK A- ROBERT BUNDI

BLOCK B – GEOFFREY MUGAMBI

F. THEGE MARKET 6A- CATHERINE MWARI AND EDITH MWENDWA

G. KIIRUA MARKET 38 A – STEPHEN MWITI

[19] As these proceedings involve close family members, each party shall bear own costs.

Dated at Nairobi this 19th day of September, 2019

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F. GIKONYO

JUDGE

Dated and delivered in open court at Meru this 25th day of September, 2019

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A. MABEYA

JUDGE

IN PRESENCE OF

M/S Rimita for petitioner

Mr. Kiheli holding brief for Kimaita for objector

All parties present