



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KITALE

SUCCESSION CAUSE NO. 28 OF 2018

IN THE MATTER OF THE ESTATE OF THE LATE NJOROGE KINUTHIA - (DECEASED)

LUCY KANUTHU NJOROGE.....APPLICANT

VERSES

RAHAB NJOKI NJOROGE & ANOTHER...RESPONDENT

RULING

1. The applicant is the first born daughter of the deceased person herein. She has filed her application for annulment of the grant dated 10th May, 2019 in which she alleges that she was duped into agreeing with the proposed confirmation of grant which was issued by this court on 8th January, 2019.
2. In her supporting affidavit she stated that she did not consent into the same as their lawyer on record did not inform her of the contents. As a result of the said misinformation she did not get equal share as the rest of her siblings. She only got a portion of the property and thus she was discriminated.
3. The Respondent **Rahab Njoki Njoroge** her mother in her replying affidavit contents that its true that the family sat before the grant was confirmed and agreed on the proposed mode of distribution and therefore the Applicant who is her eldest girl was not discriminated. She further stated that she was already married to her deceased husband and that she will in any case inherit from her husband side.
4. The court then ordered the parties to file written submissions which they did and I have perused the same together with the authorities cited.
5. The issue which must be determined is whether in the mode of distribution the Applicant was discriminated against and whether in the light of what is on record the Applicant was sized of the happenings.
6. I have carefully looked at the confirmed grant and it is true that the applicant has been left out of some of the properties which were shared out by the rest of her siblings. She has on the same breath benefited from some of the properties a fact which she does not deny. It is equally apparent that the parties did not provide for the value of each property.
7. The complaint by the Applicant is that she did not get equal share like the rest. However in her affidavit in support she states that she was given a consent document by the counsel on record which she did sign. She assumed that the same was to the effect that they were going to share the estate equally.
8. The court has perused the proceedings in this matter and its clear that when the Respondent approached the court on the 19th November, 2018 by way of an application under the certificate of urgency the application was denied as the same was not found to be urgent. They then filed another certificate in which they explained the urgency and this court on the 20th December, 2018 ordered that all the parties must attend court on the date of confirmation.
9. On the 8th January, 2019 all the parties did turn up in court and the record shows that the Applicant was also present. The application dated 14th November, 2018 confirming the grant was allowed. In essence she did consent to the same.
10. What then is her change of heart? It appears to me that she does not deny the fact that there was a family meeting as per evidence of her mother. She does not deny that she appeared before her advocate then on record in which she signed the consent to the confirmation of the grant and the mode they had agreed. More importantly she turned up in court during the hearing of the confirmation proceedings and she consented just like the rest to the said proceedings.

11. The Applicant in my view has not stated anywhere that she was so illiterate that she signed what she did not know. Secondly, she did not deny the fact that she did not attend the proceedings in court in which her presence was noted. At least even if she was duped into signing the form of consent at the lawyer's chambers she had an opportunity in court to raise her objection.

12. The allegation that she was not involved in the whole proceedings was to say the least untruthful. She must have been involved in the family meeting according to what her mother has stated. The issue of inheriting from her late husband home is farfetched. In law as clearly submitted by her counsel she will still have the right of inheriting from her father's estate.

13. In the premises, I respectfully do not find any reason to suppose that the applicant was not involved in the proceedings from the beginning as stated above. The application is an afterthought. She ought to have raised her objection when she appeared before this court during the confirmation of the grant hearing which is usually done in open court and the presence of each beneficiary noted.

14. The court is in agreement with the provisions of Articles 27 and 60 of the constitution as cited by the applicant. However I do not find any discrimination in a situation where the complaining party has acquiesced to the proceedings by fully participating in them.

15. Contrasted with the authority *of RONO VS. RONO CIVIL APPEAL NO. 66 OF 2002* , in the scenario at hand the applicant has been considered and more significantly did not raise any alarm in all stages including the confirmation stage.

16. In the premises, I think the court has stated as much to indicate that the application is unmeritorious and should not be allowed. Let the family including the Applicant enjoy and utilised what their father left behind and if necessary multiply what they have inherited.

17. The application is dismissed with no orders as to cost.

Dated, signed and delivered at Kitale this 23rd day of September, 2019.

H. K. CHEMITEI

JUDGE

23/9/19

In the presence of:-

Onyancha for Kinisu for the Applicant

None appearance for Respondent

Court Assistant – Kirong

Ruling read in open court.