



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYERI

SUCCESSION CAUSE NO. 461 OF 2011

(IN THE MATTER OF THE ESTATE OF THE LATE ALEXANDER MUCHERU GATHANGIRA alias KIMARU S/O GATHANGIRA (DECEASED))

PRISCILLA KIRIGO KIMARU.....APPLICANT

-VERSUS-

MARGARET MUCHIRI

GATHANGIRA.....ADMINISTRARIX/RESPONDENT

JUDGMENT

The late Alexander Kimaru Gathangira died intestate on 6 June 1984; he was then domiciled in the Republic of Kenya and his last known place of residence is indicated in the death certificate as Nairobi.

By a petition filed in court on 23 May 2011, the administratrix petitioned for grant of letters of administration of his estate, in her capacity as the deceased's daughter-in-law. Apart from herself, she named Eliud Muchiri Gathingira and Edward Njoroge as the only other survivors of the deceased.

She obtained the grant on 30 August 2011; it was subsequently confirmed on 13 July 2012. She distributed the deceased's estate between herself and the other two survivors.

On 7th of June 2013, the applicant filed a summons for revocation or nullification of the grant on the ground that the proceedings to obtain it were defective in substance; 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; and, that the grant was obtained by means of untrue allegation of fact essential in point of law to justify the grant notwithstanding that the allegation may have been made in ignorance or inadvertently.

In the affidavit she swore in support of the summons, the applicant listed the following as the deceased's children who survived him:

1. Geoffrey Gathuti Kimaru
2. Priscilla Kirigo Kimaru
3. Gladys Wamaaitha Kimaru
4. Linda Wanjiru Kimaru
5. Jerioth Wambui Kamau
6. Ella Wanjugu Gakuu
7. Euqinah Matindi Kimaru

Yet none of these children was ever mentioned by the administratrix as having survived the deceased; instead, so the applicant deposed, the respondent listed one Edward Njoroge Mwangi, whom she described as a stranger, as the deceased's survivor although he was neither his dependant nor a beneficiary of his estate.

In her response to the application, the respondent did not controvert the applicant's material depositions; in particular, she has not denied that

the deceased was survived by his own children or that Edward Njoroge was not related to the deceased in any way. All she said in her replying affidavit is that the applicant did not object to the petition and that, in any event, she was not entitled to a share of the deceased's estate. She did not, however, proffer any reason why the applicant or any of his children would not be entitled to a share of his estate.

Similarly, Edward Njoroge did not contest the applicant's affidavit in support of the summons for revocation or annulment of grant; in his evidence at the hearing of the summons, he testified that though he was not related to the deceased, he had purchased part of his estate after his demise.

Section 76 upon which the applicant's application has been made states as follows:

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.*

It is fairly obvious from the evidence available that the respondent did not disclose in her petition that the deceased was survived by several children. This was obviously contrary to section 51 of the Act and in particular subsections (1) and (2) (g) which state as follows regarding this question:

51. Application for grant

(1) Every application for a grant of representation shall be made in such form as may be prescribed, signed by the applicant and witnessed in the prescribed manner.

(2) Every application shall include information as to—

(a) ...

(b) ...

(c) ...

(d) ...

(e) ...

(f) ...

(g) in cases of total or partial intestacy, the names and addresses of all surviving spouses, children, parents, brothers and sisters of the deceased, and of the children of any child of his or hers then deceased;

(h) ...

(i) ...

The disclosure of the names of the deceased's children is mandatory, among other requirements in a petition for grant of letters of administration. According to section 66 of the Act, these children, being 'other beneficiaries' as described in that section, stood in a better stead to petition for grant of letters of administration of the deceased's estate than the respondent. As much as the court has the final discretion to whom the grant ought to be made, it was incumbent upon the respondent to, at the very least, cite the deceased's children to accept or refuse grant of letters of administration. Rule 7 (7) of the Probate and Administration Rules emphasises this point; it states as follows:

(7) Where a person who is not a person in the order of preference set out in section 66 of the Act seeks a grant of administration intestate he shall before the making of the grant furnish to the court such information as the court may require to enable it to exercise its discretion under that section and shall also satisfy the court that every person having a prior preference to a grant by virtue of that section has –

(a) renounced his right generally to apply for a grant; or

(b) consented in writing to the making of the grant to the applicant; or

(c) been issued with a citation calling upon him either to renounce such right or to apply for a grant.

There is no evidence that the deceased's children renounced their right generally to apply for a grant; or that they consented in writing to the making of the grant to the respondent or that they were issued with a citation to renounce their right or apply for a grant of letters of administration.

I agree with the applicant that the grant made to the respondent is vitiated in more than one of the ways prescribed in section 76 of the Act; it is thus subject to revocation or annulment either because the proceedings to obtain it were defective in substance; or that it was obtained fraudulently by the making of a false statement or by the concealment from the court of something material to the case; or that it 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. Accordingly, I allow the applicant's summons dated 6 June 2013 and hereby revoke or annul the grant made to the applicant on 30 August 2011. Parties will bear their respective costs.

Signed, dated and delivered in open court this 20th day of September, 2019

Ngaah Jairus

JUDGE