



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

FAMILY DIVISION

SUCCESSION CAUSE NO.515 OF 2010

IN THE MATTER OF THE ESTATE OF PETER KARIUKI THANDE – (DECEASED)

MAGDALENE GATHONI MWANGI.....OBJECTOR/APPLICANT

VERSUS

JOHN MWANGI MBUTHIAADMINISTRATOR/RESPONDENT

JANE NDUTA MBUTHIA.....ADMINISTRATOR/RESPONDENT

MOSES GACHICHI MBUTHIA.....ADMINISTRATOR/RESPONDENT

GEORGE KAMAU MBUTHIA.....ADMINISTRATOR/RESPONDENT

JUDGMENT

1. The Objector/Applicant filed a Summons for revocation and annulment of grant dated 15.7.2015 and filed in court on 21.7.2015.
2. The deceased herein died intestate on 22.1.2010.
3. A grant of letters of administration was made to JOHN MWANGI MBUTHIA, JANE NDUTA MBUTHIA, MOSES GACHICHI MBUTHIA and GEORGE KAMAU MBUTHIA in this Succession Cause on 13.8.2010 and the same was confirmed on 17.10.2012.
4. The Objector is now seeking revocation and annulment of the said grant and Certificate on grounds that she was not consulted and also that the said grant was issued fraudulently by making false statement and concealment of material facts that the deceased had a wife and step-children.
5. The Respondents filed a Replying Affidavit dated 21.12.2015 in opposition to the Summons for revocation and annulment dated 15.7.2015.
6. The hearing proceeded by viva voce evidence. The parties filed witness statement and affidavits and they also gave oral evidence.
7. The Objector/Applicant said she married the deceased on 30th April 2005 at St. Charles Lwanga Catholic Church in Kajiado.
8. The deceased was a widower with 12 children and the objector/Applicant had two children aged 19 and 25 whom the deceased accepted as his own.
9. She said he started paying fees for her 19 year old daughter and he gave her 25 year old son land to build a house.
10. The objector said she travelled to Dubai in 2009 to look for a job to sustain the increased size of their family.
11. While in Dubai, the Objector/Applicant said the deceased became hostile towards her and her children upon being incited by the children from the first house and he chased her children from their matrimonial home.
12. After the demise of her husband, the objector said she returned to Kenya in 2010 but feared to go to their matrimonial home as the children from the 1st family had moved to the matrimonial home.

13. The objector is now seeking revocation and annulment of the grant and Certificate of Confirmation as the Petitioners stand to disinherit her and her children.
14. The Respondents said in their Replying Affidavit and evidence in Court that the deceased and their late mother TERESIA WAIRIMU had 13 children, 12 of whom are alive.
15. They said the properties were acquired by their parents who passed away in 2001 and 2009 respectively.
16. The deceased was working with Kenya Revenue Authority (KRA) while their mother was a teacher and the objector/Applicant and the deceased did not get any children.
17. They also deposed that the objector deserted their father in 2009. They denied that the deceased adopted her children who were grownups when the deceased married her and they further stated that they had no reason to depend on him.
18. The parties filed written submissions in the Summons for Revocation and annulment. The Objector/Applicant filed submissions dated 12.9.2019 while the Petitioner/Respondents filed submissions dated 8.11.2019.
19. The Objector/Applicant submitted that the Objector/Applicant was the wife of the deceased and her children had been accepted by the deceased as his children.
20. The Objector/Applicant said she was entitled to inherit from the Estate of the deceased together with her children.
21. She further submitted that the grant of letters and certificate of confirmation were fraudulently obtained by concealment of material facts and the same ought to be revoked and set aside.
22. The Petitioners also submitted that although the Objector/Applicant got married to their father, she deserted him and therefore she was not entitled to his property and further that the letters of administration were legally obtained.
23. The Petitioner/Respondents also submitted that the conduct of the objector/Applicant who did not even attend the funeral of the deceased was undeserving of a dependant as she was not available for the deceased when he needed her.
24. They also submitted that the children of the objector/Applicant were all grownups and they were not dependants of the deceased as envisaged by section 29 of the Law of Succession Act.
25. It was further submitted that the objector's children did not testify and there is no evidence that the two were being maintained by the deceased prior to his death.
26. The Petitioner/Respondents submitted that the objector has not demonstrated that the process for obtaining the letters was defective or that the Letters were obtained fraudulently.
27. I find that there is no dispute that the deceased married the objector on 30.4.2005. The issues for determination in this summons for revocation are as follows:

(i) Whether the Objector/Applicant and her two children are dependants of the estate of the deceased.

(ii) Whether the Letters of administration and Certificate of Confirmation was fraudulently obtained by the Petitioner/Respondents.

(iii) Whether the letters and certificate should be revoked.

(iv) Whether the objector/applicant should be one of the administrators of the estate of the deceased,

(v) Who pays the costs of this Application?

28. On the issue as to whether the Objector/Applicant and her children are dependants within the meaning of section 29 of the Law of Succession Act, I find the objector as a wife of the deceased is a dependant and entitled to be included in the list of beneficiaries.

29. **Section 29** of the Law of Succession Act provides:

“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;

(b) Such of the deceased's parents, step-parents, grandparents, grandchildren, step children, children whom the deceased had taken into his family as his own, brothers and sisters, and half-brothers and half-sisters, as were being maintained by the

deceased immediately prior to his death;

30. The Objector/Applicant said her children were taken up by the deceased and he was maintaining them.

31. Although the two did not testify, there is evidence that the deceased paid fees for the objector's daughter and he gave her son a plot to build and that the two went away when the Applicant left the country for Dubai to look for a job.

32. In the case of **Beatrice CiamutuaRugamba .v. Fredrick NkariMutegi& Others ChukaSucc. Cause No. 12 of 2016 (UR)**, the court held:-

"From the foregoing, a dependent under section 29 (b) and (c) must prove that he/she was being maintained by the deceased immediately prior to his demise. It is not the mere relationship that matters, but proof of dependency."

33. On the issue as to whether the Letters of administration were fraudulently obtained, I find that the Petitioners did not disclose that the deceased had a wife although they were aware the Objector/Applicant had a wedding with their father.

34. I find that the failure to disclose renders the grant of Letters and Certificate of Confirmation null and void.

35. It therefore follows that they should be revoked

36. The circumstances in which a grant may be revoked or annulled are set out in **section 76** of the Law of Succession Act 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.

37. The summons for revocation dated 15th July 2015 is allowed in the following terms:

(i) THAT the grant of Letters of Administration issued on 13th day of August 2010 be and is hereby revoked.

(ii) THAT the Objector/Applicant to be included as one of the Administrators of the estate of the deceased.

(iii) THAT the Objector/Applicant and her children to be provided for in the distribution of the Estate of the Deceased as they are dependents within the meaning of section 29 of the Law of Succession Act.

(iv) THAT fresh Letters of Administration be issued to the following:

1. JOHN MWANGI MBUTHIA

2. JANE NDUTA MBUTHIA

3. GEORGE KAMAU MBUTHIA

4. MAGDALENE GATHONI MWANGI

(v) THAT due to the circumstances of this case, the administrators to make provision for the Objector/Applicant and her children

(vi) THAT Objector/Applicant is not entitled to equal share as she had deserted the deceased and her children were already grown up when she got married to the deceased.

(vii) THAT nonetheless they should get a share of the property as dependants of the deceased.

DELIVERED, SIGNED AND DATED IN OPEN COURT THIS 29TH DAY OF NOVEMBER,2019

ASENATH ONGERI

JUDGE OF THE HIGH COURT OF KENYA, NAIROBI.