



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KERUGOYA

SUCCESSION CAUSE NO.544 OF 2013

IN THE MATTER OF THE ESTATE OF GATIMU MUGERA.....DECEASED

GLADYS WANGECHI GATIMU.....PETITIONER

VERSUS

HANNAH WANJIRU.....1ST RESPONDENT

FREDRICK MUGO GATIMU.....2ND RESPONDENT

STANLEY WANJOHI GATIMU.....3RD RESPONDENT

JANE WANGITI GATIMU.....4TH RESPONDENT

PATRICK MWAI GATIMU.....5TH RESPONDENT

ANTONY PETER GATHERU.....6TH RESPONDENT

JAMES MUNENE WANJOHI.....7TH RESPONDENT

RULING

1. The applicant GLADYS WANGECHI GATIMU filed an application dated 4.10.2012 seeking an order that the grant issued to HANNAH WANJIRU on 12.11.2012 be revoked. It is alleged that the proceedings to confirm the grant were defective in substance and the grant was obtained fraudulently by making a false statement or by concealment from court of something material to the case.

2. The applicant's case is that the Chief's letter dated 26.4.2010 had indicated that the deceased was survived by his wife Gladys Wangechi and five children. However, when the respondent swore an affidavit in support of the summons for Letters of Administration intestate her name was not indicated as one of the beneficiaries. The applicant did not sign the consent to the making of Letters of Administration. It was only signed by the Petitioner Hannah Wanjiru. That the applicant only got 0.20Ha. She prays that the grant be revoked to ensure fair distribution of the deceased's estate.

3. The Petitioner submits that the proceedings were proper. That the applicant was aware of the proceedings before Embu Court and followed everything that the court at Embu ruled. She further submits that the applicant re-located to another marriage where she has been living. The applicant did not have children of her own but she was given a portion of land.

4. The issue for determination is revocation of grant. This governed ***under Section 76 of the Law of Succession Act Cap.160 Laws of Kenya and Rule 44*** of the Probate and Administration Rules. A party is supposed to prove that the proceedings to obtain the grant were defective in substance there was concealment from court something material. That the grant was obtained fraudulently by making of a false statement. It will also be revoked if it was obtained by means of untrue allegation of fact essential in a point of law to justify the grant. ***Section 76 (a), (b), (c) provides;***

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;

Where a party proves any of these grounds the court will revoke the grant.

5. The affidavit in support of summons for revocation of grant shows that the applicant was listed as a beneficiary. The Petitioner had proposed to give the applicant 0.20Ha. The confirmed grant shows that the applicant was given 0.20Ha.

6. The applicant testified that she had filed a parallel succession cause but withdrew it in favour of the present cause. She did not file any objection or protest. The proceedings before justice Ong'undi on 1.12.2012 show that the beneficiaries were present as per the list. The grant was confirmed and the judge ordered a certificate to be issued.

7. The deceased had left the applicant (widow) and children surviving him. The distribution should have been under **Section 40 of the Act** which provides for equal distribution of the estate equally and surviving widow as an additional unit. **Section 40** of the Act provides;

Where intestate was polygamous

(1) Where an intestate has married more than once under any system of law permitting polygamy, his personal and household effects and the residue of the net intestate estate shall, in the first instance, be divided among the houses according to the number of children in each house, but also adding any wife surviving him as an additional unit to the number of children.

(2) The distribution of the personal and household effects and the residue of the net intestate estate within each house shall then be in accordance with the rules set out in sections 35 to 38

The certificate of confirmation of grant shows disparities in the mode of distribution and some people who were given land were strangers to the estate as they were not mentioned as beneficiaries in the chief's letter. The applicant has proved that the proceedings were defective as the Petitioner had concealed material facts and distributed the estate to strangers. There was none compliance with the Act with regard to the distribution of the estate. I find that the application has merits. I allow it and I order that the grant confirmed on 10.5.2012 is revoked. The applicant is given 30 days to file affidavit of protest. The summons for confirmation of grant shall thereafter be listed for hearing.

Each party to bear its own costs.

DATED AT KERUGOYA THIS 19TH DAY OF DECEMBER, 2019.

L.W. GITARI

JUDGE