



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KERUGOYA

SUCCESSION CAUSE NO. 889 OF 2013

IN THE MATTER OF THE ESTATE OF VERONICAH NJOKI MBUTHI (DECEASED)

ZIPPY NGENDO MBUTHI.....APPLICANT

VERSUS

MARY WAMBUI.....1ST RESPONDENT

SIMON KUNGU.....2ND RESPONDENT

RULING

1. This matter relates to the Estate of Veronicah Njoki Mbuthi, deceased, who died intestate on 9th April, 1996. Letters of administration were issued to **Mary Wambui** and **Simon Kungu** on 8th May, 2014 and confirmed on 20th May, 2015.
2. A Summons for Revocation of grant was filed by Zippy Ngendo claiming that the proceedings to obtain the grant were defective for reason that the Petitioners concealed material facts as to the rightful beneficiaries of the estate. It is also alleged that the grant failed to provide adequate provision for some of the beneficiaries of the deceased.
3. In the supporting affidavit the applicant Zippy Ngendo Mbuthi avers that the petitioners failed to disclose that land parcel No. **Ngariama/Lower/Ngariama/1469** belonged to Mbuthi Simba who was her husband and who decided to register it in the name her co-wife Veronica Njoki Mbuthi. She further avers that the respondents failed to disclose that they settled on the land in the year 2012 while she has lived on the parcel of land since the year 1996 when she was married by Mbuthi Shimba. That she lives and depends on the land with her school going children. That her husband is buried on the land and she is in custody of all the documents for land Parcel No. Ngariama/Lower/Ngariama/1469 which is 0.64 Ha and not 3 acres. That she is a rightful beneficiary of the deceased Veronicah Njoki Mbuthi.
4. The Respondents in a replying affidavit depone that the applicant Zippy Ngendo is their step mother and grandmother respectively. That the applicant was well informed of the proceedings and was present in Court when the grant was confirmed and did not raise a protest. That the applicant having appeared in the proceedings cannot apply to revoke/annul the grant and yet she did not appeal.
5. In a further affidavit the applicant avers that during confirmation of grant the respondents failed to disclose that she was a co-wife and there was non-disclosure of material facts. That she attended Court when the grant was confirmed and raised a hand in order to protest but the Court did not hear her or see her raised hand. That she is illiterate and had to seek legal advice after which she filed this application. That she risks losing her inheritance unless the grant is revoked and the estate shared equally between her and the household of her co-wife.
6. The respondents filed a supplementary affidavit sworn by Simon Kungu Simba and he deposes that the deceased Veronicah Njoki Mbuthi owned land parcel No. **Gaturi/Weru/3187** which she sold to one Stephene Ndegwa Mwangi as shown by an agreement annexure A1. It is then the deceased bought the property **Ngariama/Lower/Ngariama/1469** the same year from Stephene Mungai Kagigi and was issued with a title in her own right on 29th February, 1996 as a purchaser for value as shown on the green card annexure A2. That it is therefore not true that the land was purchased for the applicant and the deceased by their husband. That their husband was not involved in the purchase. That it is after the death of the deceased that the applicant and her husband moved on to the land and lived there for unknown reasons. He husband died in 2004. The applicant owns land parcel No. **Mbeti/Kiamuringa/1803** which is registered in her name as shown by the green card Annexures A5. That the applicant lied on oath by alleging that she has no other land. That the applicant fully participated in the proceedings and she is lying on oath to say they were done in secrecy.
7. The counsels on record for the parties agreed to proceed by way of written submissions. The applicant in the submissions reiterates the averments in her affidavit.
8. For the respondent it is submitted that the applicant has not proved on a balance of probabilities that there was concealment and non-

disclosure. That the copy of register of the suit property, that is the green card (annexture A2) to the supplementary affidavit of 2nd respondent shows that the suit property was transferred by one Reuben Mungai Kagigi to the deceased on 22nd February, 1996 and the title deed was issued in the name of the deceased. The allegation that it was owned by their husband is false. That the applicant is not a recognized beneficiary of the estate.

9. I have considered the application, the averments in the affidavit and the submissions. The issue is whether this Court should order that the grant be revoked or annulled. **Section 76(d) (iii)** of the **Law of Succession Act** provides:

“A grant of representation, whether or not confirmed may at any time be revoked or annulled if the Court decides, either on an 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 making 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 untrue allegation of fact essential in point of law to justify the grant notwithstanding that the allegation was made in ignorance or inadvertently.....”

10. The provisions lay down the circumstances under which the Court may revoke or annul the grant. In this case the applicant alleges that the succession was conducted in secrecy and concealment of material facts. She has also claimed that the grant failed to provide adequate provision for some of the beneficiaries of the deceased.

11. It has however, transpired that the applicant was aware of the proceedings. She filed a caveat and she was even present in Court when the grant was confirmed. The applicant is not truthful. She had an opportunity to file an objection or a protest before the grant was confirmed which she never did. The application is an after thought.

12. It has been shown that the land in dispute in this estate was registered in the name of the deceased. She is the mother of the 1st respondent and grandmother to the 2nd respondent. These are the rightful beneficiaries. The respondents have proved that the land in dispute was registered in the name of the deceased through purchase as the sole proprietor. The allegation by the applicant that it was bought by their husband and registered in the name of the deceased for the benefit of the two of them has been shown to be false. The respondents have shown and this is not disputed or denied, that the applicant moved to the land with her husband upon the death of the deceased. **Section 38** of **Law of Succession Act** provides:

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

There is no provision for a co-wife to inherit the property of her co-wife. The applicant did not disclose the particulars of the beneficiaries who were left out and if she was one of them then she was not entitled and the respondents did not conceal anything material to the case. In **Jamleck Maina Njoroge -V- Mary Wanjiru (2015) eKLR** it was stated:-

“The circumstances that can lead to the revocation of grant have been set out in Section 76 Law of Succession Act. For a grant to be revoked either on the application of an interested party or on the Court’s own motion there must be evidence that the proceedings to obtain the grant were defective in substance, or that the grant was obtained fraudulently by making of false statement, or b concealment of something material to the case or that the grant was obtained by means of untrue allegations of facts essential in point of law.”

13. The applicant has not proved that she is entitled to any share of the estate of the deceased. She has her own property where she can settle with her children. The land which forms the estate of the deceased was bought by the deceased. There was no proof by the applicant that it was bought by their husband. The applicant has her own land parcel No. Mbeti/Kiamuringa/1803 which she has owned as from 2001 to 2015 when she subdivided. This is long after the death of her deceased husband. She lied on oath that she does not have any property. She has not come to Court with clean hands.

14. I am of the view that the proceedings were not defective. There was nothing that was concealed from Court. The claim that the applicant raised her hand when grant was confirmed is not plausible. She had only filed a caveat. She wanted to object or protest she had every opportunity but failed to do so. This application is an afterthought and is without basis. The applicant is not and cannot be a beneficiary of the estate of her co-wife. The application has not satisfied the requirements under **Section 76** of the **Law of Succession Act (supra)** to warrant this Court to revoke or annul the grant herein. The application is without merits and so I dismiss it with costs.

Dated and delivered at Kerugoya this 25th day of January 2018.

L. W. GITARI

JUDGE

Read out in open Court, Mr. Maina for Applicant, Mr. Mbugua holding brief for Kamunyori for Respondent. Court Assistant Naomi this 25th day of January, 2018.

L. W. GITARI

JUDGE

25.01.2018