



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYERI

SUCCESSION CAUSE NO.307 OF 2003

IN THE MATTER OF THE ESTATE OF WACHIRA GITHIOMI (DECEASED)

SERAH WAMBUI NDIRITU.....APPLICANT

-VERSUS-

1. ALI NDIRITU NJOROGE

2. JOHNSON KIRAGU WACHIRA.....RESPONDENTS

J U D G M E N T

The summons for revocation of grant dated 29.9.17 and filed on 2.10.17 was brought by Serah Wambui Ndiritu seeking the revocation of the grant issued to Ali Ndiritu Njoroge, and subsequently confirmed on three grounds: -

1. The grant was obtained fraudulently by the making of a false statement and concealment of something material to the case in that the petitioner/administrator failed to disclose the existence of the applicant who is a daughter to the deceased.
2. The petitioner/applicant concealed to the court that the applicant consent had not been sought.
3. The petitioner/applicant concealed the fact that the applicant had an interest in her deceased father's estate.

The summons is supported by the affidavit of Serah Wambui Ndiritu sworn on 29.9.17. She depones that the deceased Wachira Githiomi was her father, and the 2nd respondent Johnson Kiragu Wachira is her brother. That the petitioner filed the succession cause, and concealed her existence to deny her her inheritance of her father's estate.

In his replying affidavit sworn on 13.11.17, the petitioner deponed that the deceased was the registered proprietor of L.R Mahiga/Kihome/391. That the deceased who was the applicant's father, held the land in trust for his brothers Kiragu Githiomi and Njogu Githiomi.

That he the petitioner was the son of Kiragu Githiomi, and had brought the petition so as to enable his family and the family of Njogu Githiomi get their share of the said land. That in the summons for confirmation of grant confirmed on 7.10.2008 he distributed the estate to the three families:-

A grandson by name Daniel Maina Murugi got 2 acres, a sister in- law to the deceased, Esther Wangui Njogu got 0.775 acres. He and Johnson Kiragu son to deceased got 2 acres. He contended that the applicant was a proxy of the 2nd respondent and had only come on board to ensure that he, the petitioner did not inherit his father's share.

The summons was heard by way of oral evidence.

The applicant testified that the petitioner was not related to him in any way. Her witness –Timothy Mwangi Kigonye confirmed that she was the daughter of the deceased, and the 2nd respondent was her brother.

Ali Ndiritu Njoroge testified that he lived in Kiambogo in Nakuru that Wachira Githiomi the deceased, was his uncle, and that the applicant and the 2nd respondents were children of Wachira Githiomi. He said his father was brother to the deceased.

He claimed that during the consolidation and demarcation of land in her area, his father Kiragu Githiomi had left to work on the European Farms in Naivasha. That Kiragu's parcel of land was consolidated with Wachira's and registered into Wachira's name as No.391 while

Njogu's was registered in his name as 177.

His father settled in Naivasha and that is where he and his siblings were raised. He testified that when he was in class 1 his father brought her to their shamba in Nyeri. In the 70s he came back to claim land, and the mother of the 2nd respondent directed him to the 2nd respondent. That the mother of the 2nd respondent and his uncle Njogu spoke and agreed that he was entitled to land.

2nd respondent was not agreeable to these issues. Both his mother and the said Njogu died. The wife to Njogu, Esther Wangui referred the petitioner to the chief. The 2nd respondent refused to attend the meetings held at the chief's office, and D. O's office Othaya. The AP's were directed to arrest the 2nd respondent to ensure he attended the meeting in the D.O's office. He was not found but wife was taken to D.O's office Othaya where she was directed to ensure that her husband availed himself.

He did. That is when they were directed to go to the chief's office to get an introduction letter on the 2 parcels of land so that they could distribute both of them.

That is when he filed the succession cause. All along the 2nd respondent was of the view that he the petitioner and the others were not entitled to his father's estate.

The chief wrote the letter dated 8th August 2003, identifying the two deceased Wachira and Njogu Githiomi and the heirs as Eater Wangui, w/o Njogu, Ali Ndiritu Njoroge, Johnson Kiragu Wachira 2nd respondent, Asuman Ngugi Nderitu and Said Salimu. According to him, he had made a fair distribution of the estate of the deceased giving the son 2 acres, a grandson 2 acres, the family of Njogu a share, and his father's family a share. That the applicant's family had taken the lion's share.

He testified further that Esther Wangui the wife of Njogu Githiomi had told the 2nd respondent to keep No.391 and leave No.177 for him and his brothers but the 2nd respondent had refused. He was of the view that the applicant would only get a share of the estate by demanding it from the 2nd respondent, and her nephew Daniel Murugi.

He testified further that the No.177 was given to the 2nd respondent and Esther. When Esther died, the 2nd respondent obtained the whole of 177.

His final prayer was that the 2 parcels be put together and redistributed because the protestor also had a right to inherit.

On cross-examination he said he did not know the deceased but was told about him by his own father.

The 2nd respondent testified that the deceased was indeed his father, and the applicant his elder sister. That the petitioner, 1st respondent was the son of his uncle Kiragu Githiomi a.k.a Salim Mohamed. He stated that this except for being brothers, Salim Mohamed had no relationship with his father over the land No.391. That his sister was entitled to share in her father's estate.

I have carefully considered the evidence by each party, and the affidavits.

The issues are whether the petitioner concealed the existence of the applicant, and that her consent had not been obtained and that she had an interest in the estate, a fact material to this case?

From the record, it is true that when the petitioner obtained the introduction letter from the chief dated 8.8.2003 over the Estates of Wachira Githiomi and Njogu Githiomi both deceased. The applicant was not included in the list of heirs. In fact it is evident from the face of the letter that even the 2nd respondent was absent when the letter was obtained because everyone else gave their National Identity Card numbers.

It is also noteworthy that one of the persons who ended up with 2 acres of the deceased estate –Daniel Maina Murugi was not listed as a beneficiary but was brought on board as the son of a daughter to the deceased one Murugi.

The petitioner does concede that the applicant is entitled to a share of her father's estate. It is not clear how he was able to distribute part of the estate to a grandson of the deceased, and leave out a daughter of the deceased.

It is clear that the applicant was not involved in these proceedings, she was not cited, yet she was the one with a higher priority than the petitioner, and her nephew who could only inherit through his mother.

Apparently the chief who had issued the letter had not given the list of the beneficiaries of the Estate of Wachira Githiomi but was acting on the pressure of the petitioner and the District Officer Othaya, who we have been told on oath had even ordered for the arrest of the 2nd respondent to appear at his office to discuss these issues.

Is the petitioner entitled to inherit from the deceased?

From the evidence given, he claims that his father's portion of land was consolidated with that of the deceased. However there is no such evidence. Everything he said about this was pure hearsay. He did not call any witness to support that claim. His father never lived on that land in his lifetime. He never claimed any part of that land in his lifetime. In fact in his testimony, his father took him to that land when he was in nursery school. That time the mother of the 2nd respondent was alive and so was the other uncle Njogu. Why is it that there is no evidence that his father had any claim to that land?

His testimony on this issue is inconsistent and even contradictory that the deceased was holding the land in trust for his brothers yet Njogu Githiomi was the registered proprietor of 177 by himself. How then was it possible that part of his interest would be in 391? That appears improbable.

In High Court Succession Cause no 308 of 2003 Nyeri In the matter of the estate of Njogu Githiomi - Justice Makhandia, as he then was, held that the petitioner herein, who was the petitioner therein, was not beneficially entitled to the estate of Njogu Githiomi. In that case the deceased had no children. The Petitioner filed a cause seeking to inherit his property.

It is surprising that the petitioner would now purport to give a portion of the deceased's estate herein to the deceased's sister in law, yet her own husband had his own portion of land part of which he had given to the 2nd respondent. It would appear he did the distribution in this matter simply to give credence to the claim that the deceased held the land in trust for his two brothers an allegation that was not proved.

In his affidavit in response to the summons for revocation of grant, he deponed that he had transferred his portion to someone else. He produced no evidence to support that allegation and yet again contradicted himself by stating that it would be prudent to put the 2 parcels of land together, and re-distribute them so that the applicant could get her share.

Clearly the petitioner concealed the fact of the existence of the applicant to the court, he conceded that her consent was not obtained, and proceeded to distribute the estate in a manner that disinherited her.

Hence, the grant issued on 14.7.2005 and confirmed on 7.10.2008 is and is hereby revoked. All consequential orders and actions arising from the revoked grant are hereby set aside, and the title to revert to its original status.

The deceased estate is governed by section 38 of the law of succession Act. The deceased died, leaving no spouse but children. The provisions of the law are that the estate devolves in equal shares to the children.

The estate of Wachira Githiomi made up of all his parcel of land LR Mahiga/Kihome/391 be shared equally among his children, i.e the applicant, the 2nd respondent, their sister Murugi Wachira (through her son Daniel Maina Murugi) and Wamucii Wachira.

No orders as to costs.

Dated, delivered and signed at Nyeri this 19th day of April, 2018.

Mumbua T. Matheka

Judge

In the presence of: -

Court Assistant: Atelu

Serah Ndiritu

Ali Ndiritu

Johnson Wachira