



KTL.NO.366/2018

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KITUI

SUCCESSION CAUSE NO. 8 OF 2016

IN THE MATTER OF THE ESTATE OF TIMOTHY

NGUNGI MUNYOKI(DECEASED)

STEPHEN MWALILI MUNYOKI.....APPLICANT

LENAH TIMOTHY NGUNGI MUNYOKI.....RESPONDENT

R U L I N G

1. **Timothy Ngungi Munyoki** (Deceased) died intestate on the **28th** day of **June, 1988**. A grant of Letters of Administration Intestate (Grant) was issued to the **Public Trustee** on the **16th** day of **September, 1992**, and confirmed on the **12th** day of **July, 1993**.

2. In the affidavit in support of the Petition the assets of the Deceased at the date of his death were indicated as:

1. **Plot No. Matinyani/Kalia/979.**
2. **Plot No. Kyangwithya/Tungutu//1284.**
3. **Personal Effects – Kshs. 1,000/=.**
4. **Death Gratuity – Kshs. 80,854/=.**

3. He was survived by the following persons:

1. **Lenna Timothy Munyoki – Wife.**
2. **Anna Kamene Timothy – Daughter.**
3. **Elizabeth Kathini Timothy – Daughter.**
4. **Rachel Kaingi Timothy – Daughter.**
5. **Kawila Timothy – Daughter.**
6. **Munyoki Timothy – Son.**
7. **Kavula Timothy – Daughter.**
8. **Kalee Timothy – Daughter.**
9. **Kalekye Timothy – Daughter.**

10. Kailu Timothy – Son.

4. On the 1st day of **October, 2014**, **Stephen Mwalili Munyoki**, the Applicant, filed summons for revocation or annulment of grant dated the 8th day of **July, 2014** seeking orders that the grant be annulled on grounds that it was obtained fraudulently by making of false statement; by concealment from Court of something material to the case; and by means of untrue allegation of a fact essential in point of law to justify the grant.

5. In an affidavit in support of the application the Applicant deponed that the Deceased was his brother and the Land Parcel **Matinyani/Kalia/979** was a family property which was registered in the name of the Deceased in trust to him. That he has been cultivating the parcel of land since **1950's**. That in **1989**, with **Lenah Timothy Ngungi Munyoki** they caused the land to be subdivided into two (2) portions but when he requested her to transfer to him his portion she declined.

6. That the Respondent petitioned for Letters of Administration and caused the whole Land Parcel **Matinyani/Kalia/979** to be distributed to her children in equal shares including his portion. Failure to include him as a beneficiary of the Estate was concealment of material facts on the part of the Petitioner, an act that disinherited him. And that the act of the Respondent rendered proceedings to obtain the grant defective in substance as she acted dishonestly and maliciously such as to render the whole process of Confirmation of Grant null and void.

7. The Respondent filed grounds of opposition where she stated that: the Applicant was neither a beneficiary nor a Dependant of the Deceased; there has been inordinate delay in bringing of the application and that the Estate is already distributed to the rightful heirs and it does not exist.

8. In addition the Respondent filed a Replying Affidavit where she deponed that the Deceased was the registered proprietor of all the parcel of land known as **Matinyani/Kalia/979** measuring approximately **1.4 Hectares** which he purchased from **Mutindi Kinyua** and had it registered in his name in **1975**. After the Deceased's demise, she disclosed to the Public Trustee the fact that he owned the land which was included in the schedule of assets and distributed to all lawful beneficiaries. She denied the allegation that the Applicant was cultivating the land in **1950's** as it belonged to **Mulandi Kinyua** then or having caused it to be subdivided into two (2) portions.

9. In a further affidavit the Applicant deponed that the dispute in respect of the subject land was determined by the Kitui District Land Disputes Tribunal in **2004** which determined the matter in his favour a decision that was adopted by the Court in **2007** and there has been no Appeal.

10. The application was canvassed by way of written submissions.

11. Circumstances in which a grant can be annulled and/or revoked are set out in **Section 76** of the **Law of Succession Act** that provides thus:

“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.”

12. The grant herein was petitioned by the Public Trustee. Beneficiaries of the Estate of the Deceased are listed as his wife and children. In Paragraph 10 of the affidavit in support of the application the Applicant averred that he was excluded from the list of beneficiaries to the Estate. The Deceased was monogamous. The Respondent was entitled to personal and household effects of the Deceased absolutely and a life interest on the whole of the residue of the net intestate Estate. At the point of confirmation of the grant, the Court took this into consideration and noted that the Respondent was the tenant for life and thereafter her children were to get the assets in equal shares. The property in dispute **Matinyani/Kalia/979** was to be distributed to the beneficiaries in equal shares.

13. It is admitted that the Applicant was a younger brother to the Deceased but he did not make a claim under **Section 26** of the **Law of**

Succession Act. He has not asserted that he was a Dependant of the Deceased but alleges that the Deceased held the title to half of the land in trust to himself.

14. The obligation rests on the Applicant to prove what he asserts. He was required to adduce evidence to prove that the land in issue ought to have been shared between him and the Deceased.

15. In a Further Affidavit the Applicant deposes that he filed a **Land Dispute Tribunal Case No. 22 of 2006** against the Respondent and according to the verdict the land should be subdivided into two (2) and a title deed issued for his portion.

16. The Respondent averred that the land in issue has never been held by the Deceased in trust for the Applicant. She argued that the land in issue was her husband's private property during his lifetime and adduced a copy of a green card that was obtained from the lands office. According to the card, **annexture 'LTNMI'** to the Replying Affidavit, **Matinyani/Kalia/979** measuring **1.4 Ha** was registered in the name of **Timothy Ngungi Munyoki** (Deceased) as at **20th May, 1975**. The Land Certificate was issued on **7th July, 1979**. This was during the lifetime of the Deceased. Subsequently the Estate of the Deceased was distributed in year **2003**.

17. The Applicant failed to prove that the Deceased held part of the property on his behalf.

18. This being the case, at the point of petitioning for Letters of Administration the Public Trustee who had instructions from the Respondent did not conceal any information from the Court. The allegations that were presented before Court were what is documented. In the premises the application fails, accordingly it is dismissed with costs to the Respondent.

19. It is so ordered.

Dated, Signed and Delivered at Kitui this 31st day of July, 2018.

L. N. MUTENDE

JUDGE