



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

FAMILY DIVISION

SUCCESSION CAUSE NO. 3189 OF 2014

IN THE MATTER OF THE ESTATE OF PETER MWAURA NJOROGE (DECEASED)

NANCY WANJIRU NGATIA.....APPLICANT/1ST ADMINISTRATOR

VERSUS

ESTHER NJOKI MUNGAI.....RESPONDENT/2ND ADMINISTRATOR

AND

ESTHER WAMBUI NJOROGE.....OBJECTOR

RULING

1. The deceased Peter Mwaura Njoroge died intestate on 21st August 2013. Nancy Wanjiru Ngatia (the applicant) and Esther Njoki Mungai (the respondent) filed a petition before the Chief Magistrates Court at Thika in **Succession Cause No. 106 of 2014** in their capacity as widows of the deceased. The affidavit in support of the petition listed Yvonne Njoki Njoroge, Sheila Nyambura Mwaura and Julie Gathoni Njoroge as children of the deceased. The petition listed the following as the assets forming part of the estate of the deceased: K.C.B. account No. [Particulars withheld], motor vehicle registration No. KAQ 729V, L.R Dundori/Lanet Plot No. 5/17/39, Plot No. 13468/306, Kianjau Farmers Block 18/933 and SSS 13/179. A joint grant of letters of administration intestate was issued to the applicant and the respondent on 9th June 2014. On 14th August 2015 the applicant filed summons for the confirmation of grant. A certificate of confirmation of grant was issued to her on 2nd November 2015 distributing the estate between two of the daughters of the deceased: Yvonne Njoki Njoroge and Julie Gathoni Njoroge.

2. On 27th November 2014 the deceased's sister Esther Wambui Njoroge (the objector) filed an application for the revocation of the grant on the grounds that the grant was obtained fraudulently by the making of a false statement and by concealment from the court of something material to the case; that the grant was made to the applicant and the respondent after misrepresentation that they were wives of the deceased; that the applicant and the respondent concealed the fact that the deceased's children Yvonne Njoki and Julie Gathoni were adult persons and therefore entitled to petition for the grant; and that the chief's letter relied upon to obtain the grant was false and fraudulent and authored by the applicant. The application was opposed by the respondent through her affidavit dated 30th December 2015 in which she maintained that she was a widow of the deceased whose family knew her and that she had the capacity to petition the court for the grant. The applicant also filed her affidavit dated 18th April 2016 opposing the application and stating that she filed the petition to safeguard the interests of her children. The application is pending determination.

3. On 30th December 2015 the respondent filed an application under certificate of urgency seeking orders restraining the applicant, her agents, advocates or persons directly or in any way connected to her from interfering with and or from transferring, offering for sale, and or interfering with tenants in Plot No. SSS 13/179 Thika and Plot No. SSS 13/179 Thika pending the hearing of the application for revocation of the certificate of confirmation of grant on the grounds that the certificate of confirmation of grant was obtained without her involvement. The application was opposed by the applicant through her affidavit dated 11th January 2016 accusing the respondent of non-cooperation and non-participation in the process for application of confirmation of grant. The court granted a temporary injunction on 5th January 2016 restraining the applicant, her agents, advocates or persons directly or in any way connected to her from interfering with and/or transferring, offering for sale and/or interfering with tenants in Plot No. SSS 13/179 Thika pending the hearing of the application. The orders are still in place, and the application is yet to be determined.

4. On 11th October 2016 the applicant filed the present summons under certificate of urgency seeking orders that :

- a. the interim orders of injunction be issued by the court on 5th January 2016 be discharged and/or set aside;
- b. the rental income accruing from the deceased's property known as Plot No. SSS 13/179 be deposited by the tenants directly into an account to be opened in the name of the deceased by the administrators;
- c. in the alternative and without prejudice, this court be pleased to issue an order it deems fit and just to grant with a view of protecting and preservation of the estate of the deceased; and
- d. the objector Esther Wambui Njoroge be ordered by this court to account for the rental income she has been collecting from the tenants of the deceased's property known as Plot No. SSS 13/179 Thika covering the period between September 2013 and December 2015.

The application was based on the grounds that following the injunctive orders that were obtained by the respondent on 5th January 2016 the tenants of the said deceased's property have not been paying rent from January 2016 to date hence the estate was incurring loss that will be hard to recover if the court does not intervene; that the tenants have expressed their willingness to pay the accrued rent arrears but are confused as to who should collect the rental income while the revocation proceedings are ongoing; that the applicant's effort to seek a way forward from the advocates representing both the respondent and the objector has borne no fruit hence the present application; and that the beneficiaries of the estate stand to suffer loss if the said orders are not granted. The application was supported by the affidavit of Nancy Wanjiru Ngatia dated 11th October 2016.

5. The application was opposed by the respondent through her replying affidavit dated 28th April 2017. It was her case that the applicant had fraudulently obtained a certificate of confirmation of grant without involving her and gone ahead to contract different firms of advocates and rent collection agents in a bid to demand the rent paid by tenants on the property known as Plot No. SSS 13/179 which property had always been managed by the deceased's sister and objector even prior to the death of the deceased. She stated that the applicant had demonstrated greed and as a result caused a lot of confusion and uncertainty in the management of the estate of the deceased and that her quest for access to money and control of the estate of the deceased and the deceased's father were suspicious and ought not be entertained.

6. On the available evidence, there is absolutely no reason to discharge and/or set aside the interim injunctive orders that were issued by this court on 5th January 2016. The issue of the tenants of the property of the estate and the rents they are paying was, in the interim, sorted out by the consent order of 3rd May 2017 which directed that a joint account be opened in the names of counsel into which the tenants would pay the rent, including the rent arrears. The applicant should not be heard to complain that tenants are not paying rent, or do not know where to pay the rent. The estate has administrators who can sue any tenant for the payments of rent.

7. Secondly, the question of whether the objector has been collecting rent which she has not accounted for can be best dealt with if particulars can be given regarding who the tenants are, and how much they have paid to her. Without the particulars, the request to account can be allowed.

8. I have looked at this file. The big issue to be determined is who the beneficiaries are, and how much each will get from the estate. The other matters and/or applications are merely intended to cloud this issue. This is why it is important for the court to deal with the application for revocation dated 26th November 2014. Indeed on 3rd May 2017 the court, by consent, was asked to deal with this application and the application dated 30th December 2015 together, and directions were given on the filing of affidavits and written submissions on the two applications. I ask the parties to exchange such affidavits and written submissions within 30 days from today, and the applications be heard on 4th December 2018.

9. I ask that each side pays own costs.

DATED and SIGNED at NAIROBI this 22ND OCTOBER 2018

A.O. MUCHELULE

JUDGE

DATED and DELIVERED at NAIROBI this 23RD OCTOBER 2018

A.N. ONGERI

JUDGE