



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KERUGOYA

SUCCESSION CAUSE NO. 637 OF 2013

IN THE MATTER OF THE ESTATE OF BETHA NGUNJU NJOGU (DECEASED)

ANN WANJIKU RUGIA.....APPLICANT

AND

HELLEN MICHERE KINYUA.....1ST RESPONDENT

SOLOMON KINYANJUI SUSAN.....2ND RESPONDENT

RULING

1. Before me is Summons for Revocation of Grant dated 19th February, 2014 taken out by Anne Wanjiku Rugia, the applicant herein. The grant sought to be revoked relate to the estate of the late Betha Ngunju Njogu (deceased) who died on 7th November, 2012 domiciled at Ngaru sub location Kirinyaga County. Her estate comprised that property known as **INOI/KIAGA/978** and the grounds upon which the applicant seeks to annul the grant issued on 13th August, 2013 and confirmed on 7th November, 2013 are as follows:

(i) That the grant was obtained fraudulently and by concealment of material facts.

(ii) That the persons to whom the grant was made has failed to proceed diligently with the administration of the estate.

2. In her supporting affidavit sworn on 19th February, 2014, the applicant herein has deposed that she together with the 1st Respondent are the only children of the deceased herein but that the 1st Respondent filed the petition for letters of administration without her participation. She has further deposed that her signature appearing on the petition was forged and the application for confirmation of grant dated 11th September, 2013 is not hers. She has further deposed that she has been in possession of her half share of the estate but has accused the respondent for destroying her trees and crops and threatening to take over her land.

3. The 1st respondent (Hellen Micere Kinyua) has not responded to this application. Instead, Solomon Kinyua Susan has responded to the application vide a replying affidavit sworn on 13th May, 2014 where he has deposed that he purchased the 1st Respondent's share for value without any notice. He has further deposed that the Applicant is in occupation of her share while he is occupying his share which he purchased from the 1st respondent.

I have considered this application and the response made by the 2nd respondent. The applicant herein and

the 1st respondent were appointed joint administratrixes of the estate of the deceased herein on 13th August, 2013. They were both jointly issued with a grant of letters of administration of the estate of the late Betha Ngunju Njogu (deceased) who was their mother. They were the only dependants and this Court finds that under **Section 66** of the **Law of Succession Act (Cap. 160)**, they were the right persons to be appointed to administer the said estate. I have also perused the court record on 29th October, 2013 and noted that both the applicant and the 1st respondent were present in court and this Court duly proceeded to distribute the estate as proposed by both the administratrixes in their Summons for Confirmation of Grant. More importantly was the fact that the proposed mode of distribution was in accordance with **Section 38** of the **Law of Succession Act** and that is why in my view the estate was distributed as proposed – equally between the applicant and the 1st respondent.

I have looked at the certificate of confirmation issued by this Court on 7th November, 2013 and it clearly specifies as follows:

The property forming the estate **INOI/KIAGA/978** was to be distributed as follows:

1. Anne Wanjiku Rugia – 0.418 acres
2. Hellen Michere Kinyua – 0.418 acres.

If it is true that the property was distributed into 2 equal halves as **INOI/KIAGA/1909** and **1910** respectively and that the Applicant occupies her **Plot No. 1909** while the 2nd respondent purchased and occupies **Plot No. 1910** that is perfectly in order and I find nothing fraudulent about it.

4. The Applicant has complained of interference of her portion including cutting of trees and crops and if that is the case, her remedy surely does not lie in this application. She is ably represented by counsel and who should better advise her to take criminal and/or civil action against anyone interfering with her lawful property.

In the premises, this Court finds no merit in the Summons for Revocation of Grant dated 19th February, 2014. The same is dismissed with costs.

Dated and delivered at Kerugoya this 30th day of January, 2017.

R. K. LIMO

JUDGE

12.01.2017

Before Hon. Justice R. K. Limo J.,

Court Assistant Naomi Murage

Ngigi for applicant present.

Ngangah for the respondent present.

COURT: Ruling signed, dated and delivered in open court in the presence of Ngigi for the Applicant and Ngangah for the respondent in the open court.

R. K. LIMO

JUDGE

12.01.2017