



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT CHUKA

MISC. SUCCESSION CAUSE NO. 14 "A" OF 2016

IN THE MATTER OF THE ESTATE OF MARIA MUKWANJIRU M'MIRITI (DECEASED)

AND

ZIPPORAH IGOKI.....APPLICANT

- VERSUS -

SILVERIA MBIRO NJAGI.....RESPONDENT

R U L I N G

1. Before this court is summons for revocation of grant dated 13th May, 2016 taken out by Zipporah Igoki, daughter of the deceased and the applicant herein. The application relates to the estate of the late Mwarua Mukwanjiru M'Miriti (deceased) who died intestate on 22nd June, 2005 resident at Chamuga, Meru South. Silveria Mbiro Njagi, the administratrix of the estate of the deceased herein had while petitioning for letters of administration vide Chuka PM's Court Succession Cause No. 46 of 2014 had listed the following as dependants surviving the deceased namely:-

- (i) Bathromew Njeru Mabui (described as son in law)
- (ii) Silveria Mbiro Njagi (Petitioner and daughter)
- (iii) Fransesca Nkuene (daughter)
- (iv) Delfina Mukwanjeru (daughter)
- (v) Lawrence Kaburu (described as son)
- (vi) Maurice Kinyua Winfred (grandson)
- (vii) Doreen Mary Gacheri (grandchild) and
- (vii) Perpetua Lena Gatwiri (grandchild)

The only asset listed as comprising the estate was that property known as **MUTHAMBI/CHAMUNGA/375** measuring approximately 1.2 Ha or 3 acres.

2. The applicant herein has moved this court for the revocation of grant issued to the respondent herein on 14th May, 2014 and confirmed on 3rd February, 2016 on the following grounds:-

- a) That the grant was obtained through misrepresentation and concealment of material facts.**
- b) That the proceedings to obtain the grant were defective and incompetent in substance.**
- c) That the grant was obtained by means of untrue allegations of fact in a point of law to justify the grant.**
- d) That all the beneficiaries of the deceased were never consulted while obtaining the grant and distributing the estate of the deceased.**
- e) That the effect of the confirmation of grant prejudiced the applicant**
- f) That the respondent has sold part of the estate.**

3. According to the applicant vide her Supporting Affidavit sworn on 13th May, 2016, she is a daughter of the deceased and that the deceased left the following dependants namely:-

- (i) Zipporah Igoki - (applicant and daughter)
- (ii) Veronica Nkinga - (deceased daughter who left behind Bathromew Njeru).
- (iii) Silveria Mbiro Njagi - (daughter)
- (iv) Fransesca Mukwanyaga - (daughter)
- (v) Delfina Mukwanjiru - (daughter)
- (vi) Telfasio Karimi (deceased daughter who left Morris Kinyua Wilfred, Doreen Mary Gacheri and Perpetua Lena Gatwiri).
- (viii) Lawrence Kabiru (grandson).

4. The applicant has faulted the respondent for not involving all the beneficiaries and instead forging their signatures. At the hearing of this application, the applicant complained that the administratix left her out in the distribution of the estate. It was her evidence that the deceased prior to her demise had indicated that the estate measuring 3 acres was to be distributed as follows:-

- a) Lawrence Kaburu was to get one acre.**
- b) Telfacio Karimi was to get one acre as she was unmarried with 3 children, Doreen, Gatwiri and Mutembei.**
- c) The one acre to be shared by the remaining daughters.**

In her view the Petitioner did not follow the wishes of their late mother. The applicant was supported in her evidence by Erastus Miriti Ragwa who testified telling the court that he was the son in law of the deceased. Humprey Nyaga Njagi, the Assistant Chief of Chamuga Sub-location also testified and told this court that he knew the deceased and the family well. He further added that the deceased used to stay with Lawrence Kaburu and had indicated to him that he should get one acre from the estate. He further testified that as far as he was concern all the daughters of the deceased were married except one named Karimi who died and left behind a boy named Morris Kinyua and a girl who has since been married.

5. Lawrence Kaburu (CW₂) testified and told this court that she was a grandson to the deceased and that she took care of her grandmother when all the daughters got married and left the deceased alone. It was his evidence that the deceased had expressed her wish that he was to get one acre out of the estate and that all the children of the deceased were called to a family meeting held in the year 2004 where the

deceased made her wishes known adding that his mother's share (applicant) was to form part of the one acre he was to take and that Morris Kinyua was to take one acre also. He was supported on this by Doreen Mary Gachoka (CW₃) who stated that she was daughter to Telfasio Karimi and a brother to Morris Kinyua. She however stated that she was laying a claim given to her brother Morris Kinyua.

6. The respondent herein, Silveria Mbiro Njagi, has opposed the application through her replying affidavit sworn on 10th June, 2016. The respondent has deponed that the applicant was not locked out of the distribution of the estate of the deceased herein as her share went to her son Lawrence Kaburu. The respondent read malice in the applicant's contention stating that the applicant was fully involved in all the stages of the succession proceedings and denied misrepresenting or concealing any material facts to this court. The respondent has pointed out that the applicant was present in court during confirmation of grant and further testified that the applicant even co-operated when they went to Land Control Board and accused her of bringing this application as an afterthought. She further testified that the distribution of the estate catered for the interests of all the beneficiaries and that the distribution was just and fair to every child of the deceased. Fransesca Nkuene (DW₂) also testified and supported the sentiments of the respondent adding that she was also present in court on 3rd February, 2016 when confirmation of grant was made and that the applicant was also present and was by then satisfied with the proposed mode of distribution. It was her evidence that each daughter to the deceased got 1/2 acre and that the applicant expressed her desire that her 1/2 acre share should go to her son Lawrence Kaburu and wondered why the applicant has now changed tune and said that she did not benefit or that she was not consulted.

7. This court has considered the application and the grounds upon which it has been brought. I have also considered the response made by the respondent and the entire evidence tendered by all the witnesses called. The provision of **Section 76** of the **Law of Succession Act** clearly provides grounds upon which a grant can be revoked whether confirmed or not. The grounds cited by the applicant are, if established, are ground indeed which can be used to revoke grant.

8. To begin with the 1st ground which the applicant has cited as misrepresentation or concealment, the applicant has claimed that the estate was not equally distributed and that her signature in the Petition was forged. I have however considered the affidavit in support of the application further affidavit and the oral evidence tendered and I do not find any basis for the same. The distribution of the estate was done equally and fairly to all the daughters of the deceased and the grandchildren. It is quite clear from the certificate of confirmation that each of the daughter to the deceased got 0.46 acres each. The deceased daughter Telfasio Karimi (deceased) share went to her children, Morris Kinyua Winfred, Doreen Mary Gacheri and Perpetua Gatwiri while the share of Veronica Nkinga (deceased) went to Bathromew Njeru Mabui. The respondent herein decided to include her son Wycliff Kirimi in her share of 0.46 acres which was in order. The applicant's share went to her son Lawrence Kaburu. The share is indicated in the certificate of confirmation as 0.46 acres. So if she is saying that her name should have appeared alongside with that of her son-Lawrence Kaburu, she should apply to have the grant rectified rather than ask the court to nullify the grant when she has demonstrated no basis for the same. This court finds from the evidence tendered in this matter that there was no misrepresentation or concealment done at all. The respondent's proposed mode of distribution which was duly adopted in court in presence of all the parties herein was fair to all the beneficiaries. None can claim that she was locked out because each beneficiary got their rightful share. The deceased herein died intestate by law and do find that the grounds advanced by the applicant to revoke the ground are insufficient. Her rightful share as I have said is held by her son Lawrence Kaburu. The applicant has not said that her son is unwilling to share the portion with her.

In the premises this court finds no merit in the summons for revocation of grant dated 13th May, 2016. The same is dismissed but I shall make no order as to costs.

Dated and delivered at Chuka this 18th day of May, 2017

R. K. LIMO

JUDGE