



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MERU
SUCCESSION CAUSE NO.422 OF 2011

**THE MATTER OF THE ESTATE OF M'RAMARE NKUNGA ALIAS RAMARE NKUNGA
(DECEASED)**

ESTHER MPINDA RUKARIA..... APPLICANT

-VS-

M'RUKARIA M'RAMARE 1ST RESPONDENT

M'MUNGANIA M'RAMARE 2ND RESPONDENT

M'MARETE M'RAMARE..... 3RD RESPONDENT

JAPHET THIORA MARETE..... 4TH RESPONDENT

GEORGE NTHIURU MARETE..... 5TH RESPONDENT

FULL GOSPEL CHURCHES OF KENYA REGISTERED TRUSTEES..... 6TH RESPONDENT

RULING

[1] This decision relates to Chamber Summons dated 25th May 2015 which is expressed to be brought under section 76 of the Law of Succession Act, rules 26, 44, 49 and 73 of the Probate and Administration Rules and all other enabling provisions of the law. The significant orders sought are:

1. Order of inhibition inhibiting any dealings on land parcel number NTIMA/NTAKIRA/1129 either by way of subdivision, sale, lease, charge or otherwise pending the hearing and determination of this cause; and

2. Annulment or revocation of the certificate of a grant issued to M'RUKARIA M'RAMARE on 9th July 2015.

[2] This Application is based on the grounds that the grant was obtained fraudulently by making a false statement or by the concealment from the court of something material to the case. It was averred that the Respondents filed this succession cause secretly and fraudulently without informing the Applicant and all the other beneficiaries, that is, her mother and her siblings. The Applicant claims that some of the Respondents are strangers to the estate and are not dependants/beneficiaries of the Deceased.

[3] The Application is further supported by an affidavit sworn by ESTHER MPINDA RUKARIA, the

Applicant who states that she is the granddaughter to the Deceased and she has the authority to swear the affidavit on behalf of her mother SASINTA KANYIRI RUKARIA, her two brothers and three sisters as per document marked as 'EM 1'. The major contention is that they have not been provided for at all in the certificate of confirmation of grant and the 4th, 5th and 6th Respondents are strangers to the estate as they are not part of the Deceased's beneficiaries. She deposed that the Deceased left behind three beneficiaries who are the 1st, 2nd and 3rd Respondents and the Applicant is asking the court to divide the estate into three equal shares amongst the three. To preserve the estate the Applicant asks the court to issue an order of inhibition to preserve the land parcel NTIMA/NTAKIRA/ 1129 which is the only property left behind by the Deceased.

[4] The 1st Respondent opposed the application through a replying affidavit dated 12th September 2015. He states that though he was the administrator he was misled and misguided by a certain person called Murega, a clerk at GikundaAnampiu, to share the land unequally. The 2nd and 3rd Respondents filed an application dated 15th January 2013 seeking to remove him as an administrator. The said Murega is the chairman of Nchaure Full Gospel Churches of Kenya (6th Respondent) who convinced him to sell his entire land to them. The 3rd Respondent further swears that he did not involve his family or consult with them before selling the land to the 6th Respondent. He understands it was wrong and is ready to refund the purchasing price already paid to him amounting to Kshs. 750,000 to the 6th Respondent. He supports that the grant be cancelled and the land be shared equally among the three sons of the Deceased.

[5] The 2nd, 3rd, 4th, 5th and 6th Respondents in their submissions dated 14th March 2017 argued that the Applicant is a daughter of the 1st respondent who is the administrator of the estate and who together with the 2nd, 3rd and 4th Respondents are siblings and children of the Deceased and who consented to the scheme of distribution. They continue to state that the Applicant seeks to revoke the grant on the basis that she and her siblings were not provided for which is not true since her father was aware and in fact sold his share and used part of the sale to purchase land registration NO. NTIMA/GIAKI/2945 which was registered by his son's name, COSMAS KIRIMI RUKARIA. The Applicant is colluding with her father to try and circumvent the distribution since she is not accusing him of any offence. The 1st Respondent sold the land to the 6th Respondent who has constructed a school and a church on the land. That the Applicant is a granddaughter and cannot claim to rank in priority to the children of the Deceased in the distribution.

[6] The 6th Respondent replied to the application by way of a replying affidavit dated 22nd July 2016 sworn by Reverend Gerald Mugo who is the pastor in charge of Meru Local Church Assembly (L.C.A) Full Gospel Churches of Kenya. He states that the 6th Respondent is a beneficiary of the estate having been allocated 0.20Ha by the certificate of confirmation of grant. They purchased 0.29 Ha from the Petitioner's share in L. R No NTIMA/NTAKIRA/1129 as per their agreement dated 11th March 2011 at a consideration of Kshs. 1,500,000. That the Petitioner after the confirmation of the grant took steps to have the parcel of land transferred into his names by filing form NO. RL 19 and therefore the land is now in his names awaiting subdivision and onward transmission to the beneficiaries. It was contended that the children of the deceased are the 1st, 2nd and 3rd Respondents who had the first priority in the distribution of the estate and they agreed to the mode of distribution. But the 4th and 5th Respondents are children of the 3rd Respondent and they got their share from what their father was to get and therefore they are not strangers. The 1st Respondent has conspired with his children especially the Applicant to cause the court to believe that they were not informed of the filing of the cause with a motive to defraud the 6th Respondent. They argued that the 6th Respondent has not intermeddled with the estate as alleged and that immediately after signing the agreement and confirmation of the grant they have extensively developed the land for over 5 years now by building a church and primary school.

[7] It was submitted by the Applicant that GikundaAnampiu was the advocate for the 1st Respondent and Murega is the Chairman of the Nchaure Full Gospel Churches of Kenya. Murega convinced the 1st Respondent to sell his entire share of land to the 6th Respondent. She further states that the 1st Respondent

was not provided for in the sharing of the estate and that it was unfair and inequitable. The Applicant states that she has *locus standi* to make this application as she is an interested party within the meaning of Section 76 of the Law of Succession Act. She relied on the Court of Appeal decision in Kisumu Civil Appeal No.2 of 2014: Musa NyaribariGekone& 2 Others vs. Peter Miyienda& Another which defined interested party.

DETERMINATION

[8] This is an application for annulment or revocation of grant. But before I deal with the substance of the application, first things first. A preliminary issue arose: whether the Applicant an interested party in the sense of the law of Succession Act. I will cite Court of Appeal decision in Kisumu Civil Appeal No.2 of 2014: Musa NyaribariGekone& 2 Others vs. Peter Miyienda& Another that:

“The expression “any interested party” as used in that provision, in its plain and ordinary meaning, is in our view wide enough to accommodate any person with a right or expectancy in the estate. We are not persuaded, as Mr. Oguttu urged, that that expression is limited by or should be construed against the provisions of sections 66 and 39 of the Law of Succession Act. Section 66 provides a general guide to the court of the order of preference of the person(s) to whom a grant of letters of administration should be made where the deceased has died intestate. Section 39 provides for the order of priority of persons to whom the net intestate shall devolve where the deceased left no surviving spouse or children. Those provisions do not in our view have a bearing on the question of who may be an ‘interested party’ for purposes of an application for revocation or annulment of grant of letters of administration under section 76 of the law of Succession Act.”

[9] Applying the above standard, the Applicant has stated that the 1st Respondent (her father) failed to disclose to the court that he has a family which entirely depend on the estate for survival. By virtue of her being a grandchild of the Deceased, in my view, the Applicant is an interested party and may apply for an annulment or revocation of the grant. Whether she will succeed or not is a different thing altogether.

[10] I turn to the merit of the application. The issue of contention is whether or not to revoke or annul the grant. Section 76 of the Succession Act sets the threshold for revocation or annulment of grant and states as follows:-

76 “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”

[11] The Applicant bases her annulment/revocation application on the ground that it was obtained fraudulently or by the concealment from the court of material information. This is because her family, that is, her mother and siblings were not informed. However, the 6th Respondent in their replying affidavit states that they were informed. Their father who is the 1st Respondent was however the Administrator and a dependant/ administrator of the estate was aware of the succession cause. Applicant further alleges that that some Respondents are strangers to the succession cause. The Affidavit in support of petition for letters of administration intestate (Form P & A) lists the following as surviving the Deceased:

1. M’MareteM’Ramare – Son
2. Rosaria NthangiM’Muthuri – Daughter
3. M’ Mungania M’ Ramare – Son
4. Rebecca Nkatha – Daughter
5. M’ Rukaria M’ Ramare – Son

In the certificate of confirmation of a grant it is provided that the property of the Deceased should be divided among the following:

1. M’ Mungania M’ Ramare - 0.41 Ha
2. M’ Marete M’ Ramare - 0.14 Ha
3. JaphetThiotaMarete - 0.11 Ha
4. George Nthiuru M’ Marete - 0.11 Ha
5. Full Gospel Churches of Kenya (Registered Trustees (As purchaser) - 0.20Ha

From the two documents it is deciphered that the names of the 4th, 5th and 6th Respondents are not listed as dependants/beneficiaries of the Deceased. Also, the name of the Administrator/1st Respondent is not listed as one of the persons to get a share of the estate. From the submissions it is clear that the 1st Respondent sold a piece of that land to the 6th Respondent. They entered into a sale agreement on 11th March 2011 yet this succession cause was filed in court on 8th August 2011. Although there is an aura of conspiracy between the 1st Respondent and her daughter, the Applicant, in law the sale transaction is an act of intermeddling under section 45 of the Law of Succession Act as the 1st Respondent did not have any legal authority to sell the estate property. See section 45 (1) of the Succession Act;

“Except so far as expressly authorized by this Act, or by any other written law, or by a grant of representation under this Act, no person shall, for any purpose, take possession or dispose of, or otherwise intermeddle with, any free property of a deceased person.”

Courts of law will not countenance any such unlawful acts. It is regrettable that Mr. Murega, the Chairman of the Nchaure Full Gospel Churches of Kenya. Murega convinced the 1st Respondent to sell his entire share of land to the 6th Respondent. The estate must first be distributed by the court before a

portion of land could be sold. The transaction herein went against the grain of law and taints everything. These are fraudulent acts. There was also concealment of material facts to the court in obtaining this grant. Accordingly, I revoke the grant as per Sections 76 (a) and (c). I also order inhibition inhibiting all dealings to be registered on land parcel number NTIMA/NTAKIRA/1129 pending the hearing and determination of this cause. It is so ordered.

Dated, signed and delivered in open court at Meru this 25th day of July 2017

F. GIKONYO

JUDGE

In the presence of:

Mr.Otieno for Mr. Kaimenyi advocatefor respondents- absent

1st Respondent in person – present

F. GIKONYO

JUDGE