



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KERUGOYA

SUCCESSION CAUSE NO. 398 OF 2013

**IN THE MATTER OF THE ESTATE OF LUKA RUKIRI GACHOKI alias RUKIRI GACHOKI
(DECEASED)**

AGOSTINO KINYUA KIRANGA.....APPLICANT

VERSUS

JOSEPH KATHARA RUKIRIRESPONDENT

RULING

1. This cause relates to the estate of the late **LUKA RUKIRI GACHOKI** (deceased) who died domiciled at KANGAITA in the now Kirinyaga County on 9th July, 1990. Some years after his demise, JOSEPH KATHARA RUKIRI (the respondent herein), petitioned for letters of administration of the estate of the deceased which comprised that property known as **INOI/KARIKO/519**. When presenting the petition, the petitioner described himself as the sole dependant (son) surviving the deceased and was appointed the administrator of the said estate on 19th July, 2013 and got the grant confirmed on 26th February, 2014.

2. Now **Agostino Kinyua Kiranga** (the applicant herein), has taken out Summons for Revocation of said Grant dated 12th August, 2014 under **Section 76 of Law of Succession Act** citing the following grounds namely:

(i) That the proceedings to obtain the grant herein were defective.

(ii) That the grant was obtained fraudulently making of false statement and concealment from court of something material in the cause.

(iii) That the grant was obtained by means of an untrue allegation of a fact essential in a point of law to justify the grant.

(iv) That the administrator has not diligently proceeded to administer the estate.

3. In his affidavit in support of the application sworn on 12th August, 2014, the applicant has deposed that he is a grand child of the deceased and that other than the applicant, there are other dependants who survived the deceased and who were concealed by the respondent herein. The applicant has listed the following dependants as having survived the deceased:

(a) Kiranga Rukiri (deceased son and father to the applicant).

(b) Elizabeth Wambui (daughter of the deceased).

(c) Kamau Rukiri (deceased).

(d) Joseph Kathara Rukiri (respondent herein).

4. The Applicant has further deposed that the following other dependants/beneficiaries were also left out by the applicant in his petition for letters of administration;

(a) Lilian Kagonda Kiranga (daughter in law to the deceased)

(b) Peris Wakera Kiranga (also daughter in law)

(c) Elista Wawira Kamau (also daughter in law).

5. At the hearing of this summons which was canvassed by way of *viva voce* evidence, the applicant faulted the area chief for writing a misleading introductory indicating that the deceased was survived by the applicant only when there were other dependants. He, however, conceded in cross-examination that his late father lived in Mwea in a land measuring 4 acres where his siblings are currently staying. He further added that his late uncle Mbui Rukiri went to live in Nyahururu with his family long before his demise.

6. He further added that he has never stayed in property comprised in the estate herein and that the respondent has been in occupation for as long as he could remember which he stated was in 1962.

7. Joseph Kathara Rukiri, the respondent herein has opposed this application through his replying affidavit sworn on 18th November, 2014. He has deposed that the applicant is a grandchild of the deceased, that his father Kiranga Rukiri predeceased the deceased in this cause and that he was living on the estate exclusively and none of the grand children who are his nephews went to reside in the estate as they lived in other properties. He has further deposed that the applicant and his other siblings reside in Mwea and never depended on the deceased herein.

8. The respondent's position has been supported by Elizabeth Wambui Rukiri who has sworn two affidavits one sworn on 8th June, 2015 and a further affidavit sworn on 28th January, 2016. In her affidavit, Elizabeth Wambui has deposed that she is a daughter of the deceased and that Kamau Rukiri (deceased) a son to the deceased was given land at Mwea and so to Kiranga Rukiri (deceased). She has further added that Mbui Rukiri went and lived in Nyahururu with his family where he later passed on. She denied the applicant's claim on the estate deposing that he has no right over the same as his heights are on his father's land and not the deceased (grandfather). She has further denied that the applicant applied for letters of administration in secret or concealed anything as in her view everyone knew that he was a sole beneficiary to the property forming the estate herein.

9. At the hearing of this application the applicant testified that property forming the estate herein was a gift given to his late father and that the property was carved out of a forest. He added that after settling on the land, he later came and picked his late father (deceased) and moved him from Kibingo where he was living with his other siblings and settled on the estate around 1959. It was his evidence that more of his siblings followed him to Kangaita – the location of the estate herein. He justified the chief's introductory letter showing he was the only son saying that at the time he was the only son as the other brothers had passed on.

10. This Court has considered this application and the grounds that have been cited. I have considered the evidence tendered by both parties herein. The main thrust of the applicant's summons is that there was concealment of material facts by the Respondent herein. This is denied by the Respondent and this in my view is the main issue in this application.

11. I have considered the evidence tendered by way of affidavits and the oral evidence by the applicant and noted that all persons save for one who he claims were not revealed by the petitioner/respondent herein are in fact dead. The only child of the deceased not named in the petition for letters of

administration alive is Elizabeth Wambui whose affidavits clearly negates all the applicant's claim of concealment. She has sworn affidavits deposing that she was not kept in the dark and that she had no claim in the estate as in her contention the petitioner was the sole beneficiary of the estate.

12. The Applicant has conceded that he was not residing or staying with the deceased in this cause. He is a grandchild of the deceased and therefore he cannot claim to have an automatic right to benefit from the estate. The law requires that for him to qualify to be referred to as a dependant within the meaning ascribed to a 'dependant' under the provisions of **Section 29 (b)** of the **Law of Succession Act (Cap. 160 Laws of Kenya)** he should prove that he was being maintained or taken care of by the deceased immediately prior to his death. Applying this law on the Applicant's stated position as established by the evidence tendered, he cannot qualify to be considered as a dependant and therefore a beneficiary of the estate in this cause.

13. This Court has noted that none of the cited alleged beneficiaries by the Applicant has staked any claim in the estate in this cause despite insistence by the Applicant that they were also interested. This Court finds the explanation regarding their silence by Elizabeth Wambui in her affidavit sworn on 8th June, 2015 persuasive. The applicant has not proved his allegations or the grounds upon which he has launched this application to the required standard that is on a balance of probabilities. This Court finds that the contents of the affidavit by Elizabeth Wambui were not controverted by the Applicant and therefore the facts or evidence presented stand unchallenged and undisputed. If the applicant was disputing any of the facts which as I have observed negates all the allegations contained in his application, he should have sworn an affidavit to rebut or call the deponent for cross examination.

14. The Respondent gave evidence in Court and justified all the actions he took in the administration of the estate after the demise of his late father (deceased herein) and this Court finds that the applicant really has no basis to fault him for not proceeding diligently to administer the estate in accordance with the law.

15. In the premises this Court finds that no ground as provided under **Section 76 of Law of Succession Act** has been established by the applicant herein. I find no merit in the summons for revocation of grant dated 12th August, 2014. I also find the same wanting for non-compliance with **Rule 59(1) and (5) of Probate and Administration Rules** which I would have overlooked if the substance of the application had merits but in view of being devoid of merit, I have no alternative but to dismiss which I hereby do. I shall however, make no order as costs so each party shall bear own costs.

Dated and delivered at Kerugoya this 21st day of July, 2017.

R. K. LIMO

JUDGE

21.7.2017

L. W. Gitari J.,

Mr. Mwangi for applicant

Respondent absent

Court assistant Naomi Murage

Judgment read out in open court by Lady Justice L.W. Gitari this 21st day of July, 2017.

L. W. GITARI

JUDGE

21.7.2017