

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

SUCCESSION CAUSE NO. 492 OF 2004

IN THE MATTER OF THE ESTATE OF JOSEPH KINYANJUI

GOIYO alias KINYANJUI GOIYO (DECEASED)

RULING

1. The deceased herein died on 6th December 2003. A letter from the Chief of Gatamaiyu Location, dated 9th February 2004, shows that the deceased had been predeceased by his wife, and was survived by his two daughters, Susan Waithira Kinyanjui and Margaret Mumbi Kimani. Susan Waithira Kinyanjui petitioned for representation intestate to the estate of the deceased in a petition filed herein on 25th February 2004. The deceased was expressed to have been survived by the two daughters, and to have died possessed of only one asset, Gatamaiyu/Kagwe/569.

2. A grant of letters of administration intestate was made to Susan Waithira Kinyanjui, on 26th April 2004. Susan Waithira Kinyanjui died on 23rd May 2013, and she was substituted with her sister Margaret Mumbi Kimani as administrator by an application dated 18th July 2013. A grant was made to her dated 29th October 2013. The grant was confirmed on 30th July 2014, on an application dated 10th June 2014. The entire estate devolved wholly upon the administrator, Margaret Mumbi Kimani. A certificate of confirmation of grant in those terms dated 30th July 2014.

3. On 8th March 2015, a summons for revocation of grant dated 22nd February 2015 was lodged herein by John Kabiru Njuguna. He is a grandson of the deceased. He alleges that the grant on record was obtained fraudulently, for some of the survivors of the deceased were not disclosed. It was said that the deceased had three children, the two daughters disclosed, and a son, John Njuguna Kinyanjui, who was not disclosed. The said son had predeceased the deceased, but was survived by a widow and eleven children; all listed in a letter dated 25th February 2016 in the hand of the Assistant-Chief for Kamahindu Sub-Location, Gatamaiyu Location.

4. In reply the administrator concedes that the applicant is a grandchild of the deceased through her late brother, John Njuguna Kinyanjui. She says that she intended to have her late brother's share in the estate devolved to his widow, and therefore there was no intent to disinherit anyone.

5. The law is very clear, at section 51 of the Law of Succession Act, Cap 160, Laws of Kenya, all the surviving children of the deceased ought to be disclosed. In the instant case, the petitioner only listed herself and her sister as the sole survivors. It was not disclosed that the deceased had a son who was dead and who had been survived by a family of twelve. That was concealment of matter from court and it was a case misrepresentation. A grant is liable to revocation for such non-disclosure. It paints the grant-holder as a dishonest person in whom trust and confidence cannot reside.

6. What is more, the administrator had the grant confirmed; the entire estate was devolved upon herself as the sole survivor of the deceased. This was no doubt in breach of the proviso to section 71(2), which requires that the grant is not to be confirmed unless the court is satisfied as to the respective identities and shares of all beneficially entitled, and when confirmed the certificate should specify all such persons and their shares. The administrator presented herself at confirmation as the only survivor; she did not disclose the other survivors or their respective shares. This no doubt was an attempt to disinherit the family of his late brother.

7. In her replying affidavit, the administrator indicates that she subdivided the property, and devolved parts of it to strangers. None of it was devolved to the estate of her late brother. It is not stated the circumstances under which the strangers got to be entitled to a share in the estate. If they were benefited as creditors, it is not disclosed whether the debts were left by the deceased, or were incurred by the administrator. If they benefited as buyers, it is not indicated from whom they bought a portion of the property, whether it was the deceased who sold to them, or whether the transactions were with the administrator.

8. In this case, I shall not revoke the grant herein; instead I shall direct that the twelve survivors of John Njuguna Kinyanjui be entered into the schedule of survivors of the deceased herein. I shall further direct that the applicant herein, John Kabiru Njuguna, be appointed as co-administrator of the estate with Margaret Mumbi Kimani. The grant on record shall be amended accordingly. I shall direct that the orders that confirmed the grant on 30th July 2014 be vacated and the certificate of confirmation of grant of even date be cancelled. That I also hereby annul the subdivision of Gatamaiyu/Kagwe/569, and direct the Land Registrar responsible for Kiambu County to recall all the tile deeds issued out of the alleged subdivision for cancellation, and to revert the property to the position it was in as at 30th July 2014. The administrators shall apply afresh for the confirmation of the amended grant.

9. The application dated 22nd February, 2015 is disposed of in the terms proposed in paragraph 8 hereabove. The estate is comprised of assets situated exclusively out of Nairobi and within Kiambu County. This cause shall therefore be transferred to the High Court of Kenya at Kiambu for final disposal. The applicant shall have costs of the application.

DATED, SIGNED and DELIVERED at NAIROBI this 29TH DAY OF SEPTEMBER, 2017.

W. MUSYOKA

JUDGE