



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
FAMILY DIVISION
SUCCESSION CAUSE 934 OF 2014
(SUCCESSION CAUSE 677 OF 2011)
(THIKA LAW COURTS)

IN THE MATTER OF THE ESTATE OF NJOKI MUNDIA KIARIE (DECEASED)

PATRICIA WANJA MUNDIA.....PETITIONER

VERSUS

JACINTA GATHONI KARANJA.....OBJECTOR

LUCY NYAMAITHO MUOHI.....OBJECTOR

ALICE WANJIRU KANYI.....OBJECTOR

SUSAN WAIRIMU MWAURA.....OBJECTOR

SALOME WAMBUI MUNDIA.....OBJECTOR

MARGARET WANJIKU MUNDIA.....OBJECTOR

SUSAN NJERI WAWERU.....(DECEASED)

RULING

PLEADINGS

The deceased Njoki Mundia Kiarie died on 23rd June 2007 as evidenced by the death certificate attached to the Petition.

The Applicants /Objectors filed an application under **Section 47 & 76 of the Law of Succession Act and Rules 44(1) 63 (1) & 73 of the Probate & Administration Rules.**

By summons for revocation of grant issued on 16th May 2011 to the Petitioner/ Respondent and confirmed on 20th March 2013, the Objectors sought from Court the said grant be revoked on the following grounds:

- a. The Objectors are biological children of the deceased and were excluded in obtaining the grant of letters of administration;
- b. The Objectors were not informed or consulted and did not give their consents to obtaining the grant;
- c. The Objectors filed **Succession Cause 194 of 2012** and served the Petitioner and she did not object or accept but went quiet.
- d. The Objectors obtained a grant on 21st January 2013 and confirmed grant on 9th December 2013 in which the Petitioner and Margaret Wanjiku Mundia did not consent despite service of the same to them. Yet in the mode of distribution, they were included and the suit properties were to be shared equally among all the beneficiaries.
- e. The petitioner sought and obtained the grant through fraudulent means by making false statements and concealing material facts from the Court in **Succession Cause 677 of 2011**.

By a supporting affidavit filed by the Objectors on the same date from paragraphs 9-15 they outline in great detail the events that culminated to disinheritance of the objectors as beneficiaries of the deceased's estate.

Among the issues, the Petitioner through pleadings filed in **Succession Cause 677 of 2011** marked as **SWM1** annexed to the supporting affidavit, presented the letter from the Area Chief and stated that the deceased was survived by 8 daughters but the deceased left a will where she bequeathed all properties to the Petitioner as sole beneficiary of her estate.

The Petitioner sought confirmation of grant issued before 6 months were over; the Court deferred the same and confirmed the grant on 20th March 2013.

Pursuant to the confirmed grant, the Petitioner was registered as proprietor of the suit properties: **NDARUGU GITHAITE 1972 & NDARUGU /GITHAITE/150**.

The Petitioner has been sighted in the company of certain people on the suit properties believed to be prospective buyers.

The Petitioner/ Respondent was served with the Application and hearing date at Karinga township in Gatundu on 19th October 2015.

The Petitioner was in the company of her son Mundia and she declined to acknowledge service. According to her the case ended a long time ago. All these facts are contained in the Affidavit of Service filed in Court on 2nd November 2015.

The hearing of the summons for revocation of grant was heard *ex parte* through learned Counsel Mr. Wainaina

for the Objectors Applicants.

DETERMINATION

The Court has considered pleadings filed and oral submissions made in court and makes the following observations;

1. In Thika Chief Magistrate's Court there were 2 concurrent Succession Causes over the same estate; **Succession Cause 194 of 2012** by the Objectors and Susan Wairimu Mwaura and Alice Wanjiru Kanyi as administrators; **Succession Cause 677 of 2011** by Petitioner; Patricia Wanja Mundia as administrator and the sole beneficiary of the estate.

2. The Chief's letter of 25th November 2011 in **Succession cause 677 of 2011**, the Chief states that the deceased has 8 daughters who are married. However, according to a Will the deceased left signed and witnessed by elders the deceased's estate was to be inherited by the Petitioner only.
3. The alleged Will was not attached or produced in the Trial Court according to the Court file **Succession Cause 677 of 2011** presented to this Court.
4. The Will was not read to all beneficiaries as required by law. The beneficiaries did not get a chance to confirm or contest the Will as a valid will under **Section 5 & 11 of Law of Succession Act Cap 160**.
5. If there was a Will, the Petitioner applied for a grant of letters of administration intestate. The petitioner did not mention the Will in any of her pleadings in Court.
6. The petitioner concealed material facts to the Court. She stated in the Petition as follows:

‘The deceased did not leave any other survivors except the Applicant herein’

See

SAMUEL WAFULA WASIKE vs HUDSON SIMIYU WAFULA CASE NUMBER 253 OF 1993 C.A. LLR CAK which states;

A grant obtained on false claims without obtaining consents of beneficiaries is liable to revocation.

The petitioner did not in any of her pleadings deny the objectors are natural children of the deceased and her siblings.

By virtue of **Sections 32(2) (3) (5) & 38 of the Law of Succession Act Cap 160**, the children of the deceased are to share the deceased's estate in equal shares.

See **IN THE MATTER OF ELLAH WARUI NTHAWA (DECEASED) SUCCESSION CAUSE NUMBER 971 OF 2001 (NAIROBI)**

7. By concealing the fact that the deceased had 8 daughters, she fraudulently obtained the grant without the other beneficiaries' knowledge and consent. She contravened **Section 51 (1) (g) Law of Succession Act & Rule 26 (1) & (2) of Probate & Administration Rules**.
8. The Petitioner obtained confirmation of grant without recourse to other beneficiaries of the deceased's estate.

In light of the above consideration, the grant and confirmed grant obtained by the Petitioner in **Succession Cause 677 of 2011** is irregular, illegal and invalid as she failed to follow due process in obtaining the said grant.

Despite service of the hearing date, the Petitioner did not attend Court, file any documents or present any reason for the Court to consider. The objectors' averments and pleadings remain uncontroverted and on a balance of probability, the Objectors have proved their claim.

COURT ORDERS

The court orders as follows;

1. **The grant issued to Patricia Wanja Mundia on 16th May 2012 and confirmed on 30th March 2013 is hereby revoked under Section 76 (a) (b) & (c) of Law of Succession Act Cap 160**

2. **The Grant issued on 21st January 2013 to Susan Wairimu Mwaura & Alice Wanjiru Kanyi and confirmed on 9th December 2013 is upheld as it complies with the law; includes all beneficiaries all properties of the deceased and mode of distribution is to share equally amongst all beneficiaries. The suit properties shall be held by the administrators in trust for all beneficiaries including the Petitioner and share equally.**
3. **If any of the parties is aggrieved by the list of beneficiaries, list of assets that comprise the deceased's estate and mode of distribution, the party shall formally apply to Court for the objection to be heard and determined.**
4. **The Land Registrar Kiambu to revoke the titles of the 2 suit properties in the name of the Petitioner Patricia Wanja Mundia and not register any interest, subdivision, alienation, transfer until the distribution of the deceased 's estate is resolved between all beneficiaries of the estate and are ready for transmission of their respective interests.**
5. **If revocation of titles with respect to NDARUGU GITHAITE /1972 & NDARUGU/GITHAITE/150 is not effected forthwith; the registered proprietor(s) shall be trustees with the administrators of the deceased's estate to hold the suit properties in trust for all beneficiaries of the deceased's estate; the Petitioner and all objectors as children of the deceased.**
6. **The Beneficiaries of the estate may engage services of a surveyor to propose the mode of distribution on the suit properties without interfering with permanent structures and developments on the land.**
7. **Each party is at liberty to apply**
8. **Each party to bear its own costs.**

DELIVERED AND SIGNED IN OPEN COURT AT NAIROBI THIS 29TH DAY OF FEBRUARY, 2016

M.W. MUIGAI

JUDGE

In the presence of:

Mr. Gikiye for the Objectors