



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIVASHA

HCC SUCC. NO. 55 OF 2014

IN THE MATTER OF THE ESTATE OF SIMON NJOGU GICHENI (DECEASED)

LUCY NJERI NJOGU.....OBJECTOR

-VERSUS-

JOHN NJENGA NJOGUPETITIONER

RULING

1. The parties to the Summons for revocation of the grant issued to John Njenga Njogu (the Petitioner/Respondent) agreed to file submissions in respect of the application and to rely on their respective affidavits to the said Summons.
2. The gist of the applicant's case is that she was the widow of the deceased **Simon Njogu Gicheni** and had four children with him; that he resided at Mai Mahiu and died of natural causes in the year 2001 but the widow did not take out Letters of Administration.
3. She complains that the Respondent, a son of the deceased through his first wife, also deceased, applied for Letters of Administration at Engineer Subordinate courts using a fake death certificate purporting that the deceased died from bodily injuries and that he excluded her and her children from the administration process.
4. The Respondent disputes the assertions by the applicant and asserts that he is the sole lawful heir to the estate of the deceased. He contends that the applicant was not a wife of the deceased but that she left the deceased's land (home) after police arrested her as a murder suspect in relation to the death of his father. He denies that the applicant's children are children of his deceased father. He continues to stand by his copy of death certificate and states that he has since transferred the land owned by the deceased father to himself, and sold the same.
5. Having considered the matters canvassed before me, it is apparent that the deceased lived at Maai Mahiu at the time of death; that the two parties herein are well known to each other, and that the Respondent is the son of the deceased by a deceased first wife.
6. The Respondent's affidavit is silent on the fact that the succession case was filed at Engineer SRM's court rather than Naivasha where the property of the deceased was located. Secondly, the deceased resided at Mai Mahiu but the chief of the said area was not approached to introduce the Respondent. Instead a chief based in an undisclosed location of Naivasha did the introduction letter used to file the petition. It is clear from the letter of the Chief Mai Mahiu that the applicant was considered the wife of the deceased and her children as his children. This is also confirmed by copies of identity cards attached to the applicant's affidavits. The Respondent is clearly aware of the relationship between his deceased father and the applicant although he claims it did not amount to a marriage "under any known custom or law".
7. On a balance, I am persuaded, particularly upon considering annexures **LNN 1(a) & (b)** being letters emanating from the office of the Senior Chief Mai Mahiu location, that the Respondent devised a fraudulent scheme to exclude the applicant and her children from the administration of

- the estate of the deceased.
8. The letter he purported to present to court for this purpose does not even indicate the location in respect by which it was issued. Nor is the name of the chief who authored the same indicated. Besides it is quite obvious that despite the close proximity between Mai Mahiu and Naivasha law courts the Respondent chose to file the succession cause in Engineer court, which probably did not have the necessary jurisdiction at the time, under Section 48 and 49 of the Succession Act.
 9. It would seem that a few months after receiving the confirmed grant the Respondent commenced the transaction of transferring the land to himself, and now claims to have sold it to a third party. The Respondent's actions taken together appear tainted by fraud as demonstrated by and the intention to conceal the existence of other beneficiaries from the court.
 10. Allegations that the objector was a suspect to the murder of the deceased have no effect as there is no evidence that the applicant was charged or convicted for such an offence.
 11. In the circumstances, the grant issued to the Petitioner cannot stand and is hereby revoked. I direct that a new grant does issue in the names of the objecting widow, her eldest son George Gatonye Njogu and the Respondent herein, John Njenga Njogu. The same will be confirmed in the usual way after the lapse of six months of the date of issue.

Delivered and signed at Naivasha this **21st** day of **April, 2016**.

C. MEOLI

JUDGE

Mr. Njuguna for Applicant

Mr. Gichuki holding brief for Mr. Irungu Mwangi for Respondent

Cc Barasa