



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
FAMILY DIVISION
SUCCESSION CAUSE 2957 OF 2012
(SUCCESSION CAUSE 254 OF 1996 KIAMBU LAW COURTS)

IN THE MATTER OF THE ESTATE OF KAGIRI NDUGI (DECEASED)

DAVID MUCHAI KAGIRI.....APPLICANT

VERSUS

STEPHEN NGERE KAGIRI.....RESPONDENT

RULING

PLEADINGS

The Deceased died on 30th April 1995.

By an application dated 7th December 2012, the Applicant David Muchai Kagiri sought revocation of grant issued on 15th December 2011 to Stephen Ngere Kagiri the Respondent in **Kiambu Chief Magistrate's Court Succession Cause 254 of 1996**.

The Applicant's grounds are as follows;

- a. The Respondent administrator of the estate of the deceased is in the process of intermeddling with the estate.
- b. The Respondent is in the process of distribution of the deceased's estate without consents of some of the beneficiaries of the estate.
- c. The Respondent applied for confirmation of grant of the deceased's estate without informing some of the beneficiaries of the estate.
- d. The beneficiaries did not agree upon the proposed mode of distribution in the summons for confirmation.
- e. The administrator has not faithfully administered the deceased's estate and he has not rendered accounts to the beneficiaries of the deceased's estate.

DETERMINATION

From the Court records, on 7th December 2012, the Court vide Hon. Justice Njagi ordered the Application be served to the parties. On 15th January 2013, Hon. Justice Musyoka ordered the application be heard through *viva voce* evidence on a date to be obtained in the Registry. On 22nd May 2013 and 16th

July 2013 the same Court Hon. Justice Musyoka sought **Succession Cause 254 of 1996** be brought from Kiambu **Law Courts** to this Court.

On 24th April 2015, the Applicant informed this Court that the matter was filed in Kiambu Law Courts. When the summons for confirmation of grant was filed they waited for the Respondent/ Administrator to call the beneficiaries to Court and confirm their consents to the proposed mode of distribution of the deceased's estate. They were not informed, consulted or called to attend Court.

Instead the Respondent Administrator summoned them to Githunguri Land Board on 30th June 2012 and they were to contribute each Ksh. 50,000/= towards subdivision and issuance of new title deeds.

The beneficiaries refused to comply with the distribution of the deceased's estate as they did not participate and consent to the mode of distribution. The Applicant accused the Respondent as administrator of not disclosing the rent receivables from the shops in Githiga Kahuhu market that comprise of the deceased's estate. The Respondent as administrator holds all title deeds of the suit properties. The Applicant asked this Court for the above reasons to revoke and annul the grant.

The Respondent Stephen Ngere Kagiri was in court and he requested this Court to allow him time to file the Replying Affidavit to this Application and he would come back to state his side of the story with regard to this matter. This Court obliged his request. This Court allowed the beneficiaries to negotiate an out of court settlement on distribution of the deceased's estate.

On 19th October 2015 the Applicant was in Court but the Court was indisposed. On 23rd November 2015 the Applicant attended Court; the Respondent did not attend Court despite being served with the hearing date. The court ordered that the beneficiaries of the deceased's estate be served with summons to appear in Court on the next hearing date. On 15th February 2016 none of the parties were present in Court. On 17th May 2016 the Applicant attended Court. The Court record confirmed the Deputy Registrar Family Division served summons on each of the beneficiaries of the deceased's estate. They declined to come to Court so as to be informed of the Court annexed mediation process that would facilitate family negotiations and settlement on the mode of distribution of the deceased's estate.

The beneficiaries who were present in Court are;

- a. Mary Njeri
- b. Titus Ngigi
- c. George Kangethe
- d. David Muchai Kagiri (Applicant)

This Court perused the **Succession Cause 254 of 1996** and found that;

The Summons for confirmation of grant dated 14th June 2011 filed by the Respondent as Applicant /Petitioner.

There is no consent to his appointment as administrator by the beneficiaries of the estate

The widow of the deceased Hannah Wanjiru Kagiri who is alive though old and sick ought to be administrator of the estate or waive her right and appoint any of her children to step in as administrator on her behalf.

The Respondent is sole Applicant and Petitioner of the deceased's estate; in a family of 13 people there ought to be at least 2-4 administrators of the deceased's estate.

The summons for confirmation of grant lists the beneficiaries, the assets comprising the deceased's estate and the proposed mode of distribution. The consents are not signed by all beneficiaries; the written signatures of the following beneficiaries are left out; Titus Ndugi Kagiri, John Ndugi Kagiri, Mary Njeri

Kagiri and James Muniu Kagiri. The Court ought under **Section 71 of the Law Of Succession Act Cap 160** halted the confirmation of grant process to await their attendance, signature or filing of protest by the aggrieved party or beneficiary with an alternative mode of distribution for the Court to hear and determine the same.

Despite lack of consents or protests by the beneficiaries to the mode of distribution, the Court did not satisfy itself as required by law under **Section 71 of Law of Succession Act**

‘as to the respective identities and shares of all persons beneficially entitled and when confirmed the grant shall specify all such persons and their respective shares.’

Therefore in the absence of the Respondent’s reply to the application, failure to attend Court or to provide any reasons for absence and non attendance of all other beneficiaries despite summons from this Court, the Applicant’s application is uncontroverted by any other evidence on record and the grounds are confirmed from the Court record of **Succession Cause 254 of 1996** that the summons for confirmation of grant did not involve all beneficiaries and they did not all give consent to distribution of the estate.

COURT ORDERS

1. **The grant issued on 15th December 2011 is hereby revoked and annulled and all consequential orders.**
2. **A new grant is issued by this Court appointing the following as administrators of the estate of the deceased;**
 - a. **James Muniu**
 - b. **Titus Ngige**
 - c. **Mary Njeri**
 - d. **David Muchai**
3. **The new administrators to exercise their statutory mandate under Section 83 of law of Succession Act Cap 160 on behalf of all beneficiaries of the deceased’s estate.**
4. **The Administrators to facilitate meetings with a view to agreement and consensus on the mode of distribution and file summons for confirmation of grant.**
5. **Any aggrieved party /beneficiary may file protest with alternative mode of distribution for the Court to hear and determine.**
6. **Each party to bear own costs.**

DELIVERED AND SIGNED IN OPEN COURT AT NAIROBI THIS 31ST DAY OF MAY 2016

MARGARET .W. MUIGAI

JUDGE

In the presence of:

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