



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIVASHA

HCC MISC NO. 44 OF 2015

IN THE MATTER OF THE ESTATE OF THE LATE NJOROGE KAMAU (DECEASED)

HANNAH MUTHONI KAMAU.....APPLICANT

VERSUS

NYAKIO NYAINI.....1ST RESPONDENT

JANE WANJIKU MUTHEE.....2ND RESPONDENT

STANLEY KINYANJUI GATARA.....3RD RESPONDENT

R U L I N G

1. The parties to the Summons for revocation dated 31st July, 2015 have filed written submissions. The undisputed background to the summons is that the two petitioners in Naivasha Chief Magistrate's Succession cause No. 42 of 2014, namely **Nyakio Nyaini** and **Jane Wanjiku Muthee** (hereinafter the 1st and 2nd Petitioner) in their capacity as daughter-in-law and grand daughter to the deceased obtained letters of administration to his estate. The said grant was subsequently confirmed and the estate distributed between the families of the sons of the deceased.
2. The said sons, also deceased were **Nyaini Njoroge**, the husband of the 1st Petitioner in the impugned succession cause; and **Peter Kamau Njoroge** the father of the 2nd petitioner through his first wife **Rahab Mugure Kamau** (also deceased). The second and surviving wife of **Peter Kamau Njoroge** is **Hannah Muthoni Kamau (the Objector herein)**. She had nine children with her deceased husband while the mother of the second petitioner also had nine children.
3. There is no dispute that the Objector was not a party to the impugned succession cause in the lower court and that despite being a widow to one of the sons of the deceased herein, and having children with the said son, no property was assigned to the said house in the subsequent distribution.
4. The Objector states that she was not aware of the succession cause, nor was her consent sought. The 1st Petitioner's feeble response is that the Objector and the 2nd Petitioner should solve their problems in their home (**Peter Kamau Njoroge's**) without involving her. She states that the 2nd petitioner represented the family of Peter Kamau Njoroge in the succession cause.
5. The 2nd Petitioner though admitting that her late mother's house shared equally with the applicant the parcel Nyandarua/Muruaki/533 which comprised the estate **Peter Kamau Njoroge** vide succession cause no. 114 of 2005, proceeds to assert that her step-mother (the Objector) was not entitled to share the land which is the subject of the present dispute, namely Naivasha/Mwicingiri/Block 2/68 and which forms part of the estate of the said Petitioner's late grandfather.

6. Her explanation is that a portion of the land, measuring about 13.1 acres was given to her mother's house by the deceased herein as a reward for the care they gave him late in his life. The Objector disputes this allegation and asserts that the petitioners filed the succession cause in the lower court secretly in an attempt to disinherit her and her children. She urges the court to nullify the titles issued pursuant to the lower court's confirmed grant and to issue a fresh grant in favor of the Objector and the petitioners and also to distribute the property of the deceased Njoroge Kamau.
7. The court has considered the material before it, in light of the parties respective submissions. The application is brought under section 76 of the Law of Succession Act which states:

“A grant of representation, whether or not confirmed, may at any time be revoked or annulled if the court decides, either on application by any interested party or of its own motion-”

in substance.

(b)that the grant was obtained fraudulently by making of a false statement or by the concealment from the court of something material to the case;

(c).....”

8. There can be no question that the petitioners did not obtain the Objector's consent before filing the impugned succession cause. The 1st petitioner was a daughter in law of the deceased, and stood in the same rank in priority as the Objector. No reason has been proffered by her for the failure to involve the applicant. Her affidavit reveals an indifferent attitude towards the exclusion of the Objector and her children. All she is asking the court is to leave her “share” of the estate undisturbed and to be excluded from the dispute which she perceives to be in the family of **Peter Kamau Njoroge**.
9. The 2nd petitioner's claim that the deceased herein bequeathed the larger portion of the estate to her mother's house alone has no legal backing. The deceased died intestate. Thus the Objector as a surviving wife of the deceased's son **Peter Kamau Njoroge** was entitled to claim as a beneficiary of the estate of his father.
10. On the face of it the 2nd Petitioner got the entire parcel of land measuring 13.1 acres registered in her name as her siblings were not included in the distribution. Neither were their shares and those of the children of the 1st Petitioner identified. The summons for confirmation of the grant in the lower court indicates that one **Stanley Kinyanjui Gatara**, described as a buyer would get one acre. This was included in the confirmed grant.
11. The Objector was entitled to be involved in the succession cause relating to her deceased father in law. Evidently, she was not. Rule 26 (1) of the Probate and Administration Rules states that:

“Letters of administration shall not be granted to any applicant without notice to every other person entitled in the same degree as or in priority to the applicant”.

I agree with the statement by Wendo J in **Alice Mugo alias Muthoni Paul & Another -vs- Grace Waruguru Njagi (sued as the administrator of the estate of the late Welson Njagi Mugo (deceased) (2015)eKLR**, that the failure by a petitioner to comply with this rule renders a grant in her favor liable for revocation. 11. The petition in the lower court was based on the chief's introduction letter dated 25/2/2014 (in annexure **H.M.K. 3** of the applicant's affidavit). The same is authored by a chief in Naivasha who may not have known about the existence of the Objector and her children as likely beneficiaries as the said applicant lives in Kinangop.

12. Her own letter from the chief Kinangop dated 29/6/15 lists the entire and undisputed family of **Peter Kamau Njoroge**. I am satisfied that the petitioners in the impugned succession cause concealed material facts from the chief in Naivasha and the court, through deliberate failure to disclose the existence of the Objector and her children.
13. Besides, the proceedings were defective for several reasons, including the failure to obtain the

- Objector's consent and at confirmation, the failure to identify the shares in respect of all the children in the houses of the petitioners as required under section 71 of the Law of Succession Act. The grant issued and confirmed in the lower court cannot stand and is hereby revoked.
14. The grant having been revoked, the 2nd petitioner cannot be heard to say that she should be allowed to hold onto what she has received through it. The grant was tainted and could only result in a tainted title to the property acquired thereby. That notwithstanding, I have borne in mind that there seems to be no dispute that the family of the first son, **Nyaini Njoroge** was entitled to get a smaller portion of the land while that of **Peter Kamau Njoroge** got the larger portion of the Mwachiringiri property.
15. It appears to me that the parties herein including the Objector are willing to go by that arrangement. Thus, I think that despite the malfeasance on the part of the petitioners, an order nullifying their respective titles would not be proportionate in the circumstances of this case. Therefore, in lieu of an order directing the cancellation of the petitioners' respective titles I will extend the conservatory order issued on 31/7/16 in respect of the parcel No.s MWICHIRINGIRI/BLOCK 2/2284, 2285 AND 2286 which are the subdivisions of the mother title MWICHIRINGIRI/BLOCK 2/68 comprising the estate of the deceased herein. This order will remain in place until further orders of this court in the matter.
16. With regard to the 3rd Respondent and alleged purchaser **Stanley Kinyanjui Gatara**, he has no legal standing before this court as he bought the property of the estate namely sub division No. 2286 before the grant was confirmed an illegality. The fate of said one acre of land will await the final orders of this court. A fresh grant will forthwith issue in the names of the Objector and the two petitioners. An application to confirm the said grant, can be filed after 2 months of today's date and should be accompanied by affidavits of the 3 administrators herein appointed, proposing the mode of distribution.
17. All the costs occasioned by this application will be borne by the 1st and 2nd petitioners as well as the purported buyer the 3rd Respondent as they are responsible for the imbroglio attending the succession of the estate of the deceased herein.

Delivered and Signed on this **20th** day of **May**, 2016

C. MEOLI

JUDGE

In the presence of:

Non Appearance For Objector/Applicant

Mr. Gichuki For the Respondents