



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS

SUCCESSION CAUSE NO. 463 OF 2005

**IN THE MATTER OF THE LATE MULI WAMBUA ALIAS MULI WAMBUA
NGUNGU(DECEASED)**

MUKUI MULI.....APPLICANT/OBJECTOR

VERSUS

MUNYIVA MULI.....1ST RESPONDENT

GITONGA KAMUNDI.....2ND RESPONDENT

RULING

The Summons

The Objector moved this Court through an application by way summons for revocation of grant dated 9th November 2015, wherein she sought the following orders:-

1. That Gitonga Kamundi be enjoined in this cause as a co-Respondent.
2. That pending the determination of the application, the court issues preservative orders against the Respondents, their agents, employees, servants and or proxies from trespassing, sub-dividing, selling, disposing, transferring, erecting perimeter walls around them fencing, wasting, alienating and or dealing in any way with land parcel Machakos/Matuu/230, Machakos/Matuu/238 and Machakos/ Kangonde/456.
3. That the officer commanding Matuu police station to ensure compliance with the orders.
4. That the grant of letters of administration and the certificate of confirmation of grant dated 26.1.2009 and the rectification of grant be revoked and or annulled together with any acts consequent and or pursuant to the grant and certificate of the grant.

Prayers 1, 2 and 3 were granted during a hearing held on 17th November 2015, and parties took directions on the hearing of the outstanding prayer for revocation. The facts giving rise to the application as stated by the Objector in the said Summons and supporting affidavit she swore on 9th November 2015 are that the 1st Respondent was granted the certificate of confirmation of grant on 26th January 2009, and has already disposed some of the assets to the estate to the 2nd Respondent.

Further, that the grant was obtained through material non-disclosure that the Objector was a lawful wife

to the deceased, and that the acts of the 1st Respondent were meant to deny the Objector her right of inheritance from the estate of the deceased. Additionally, that the 1st Respondent was never a widow of the deceased having officially divorced him, and was thus a stranger to the estate.

According to the Objector, the late Muli Wambua who is the deceased, married three wives who were Kanee Muli (since deceased), Munyiva Muli and herself. She stated that she did not get children of her own, but through the Kamba culture of “Iweto” she married Monica Syombua who bore her five children. Further, that her late husband then married the 1st Respondent, who had a daughter from another marriage, Sabeth Muli, whom they embraced as their own. The 1st Respondent then bore a son, namely Joshua Muli with the deceased, upon which she went to her father’s home when the son was two years old, as a result of conflict with the deceased. That upon her return after 2 years, she had already got a third child, namely Syomiti Muli.

The Objector averred that upon her return, the 1st Respondent insisted on getting a parcel of land of her own, and that the deceased then decided that Machakos/Kangonde /456 would be the matrimonial home, and he sub-divided his two (2) acre parcel at Matuu into four (4) equal half acre portions for Kanee Muli, the Objector, the 1st Respondent and Beneka Wambua, his mother. The 1st Respondent and Beneka Wambua subsequently sold their portions.

The Objector stated that on her part, she agreed with her husband that they would divide her portion into two and register them in his name, which he would hold in trust for her. The sub-division bore the two titles Machakos/Matuu/230 and Machakos/Matuu/238.

It is alleged that the 1st Respondent then went to their joint matrimonial home at Machakos/Kangonde/456, burned her house therein and took away her children after disagreeing with the deceased, and returned to her father’s home. Further, that after one week she customarily divorced the deceased, who accepted the divorce and retained the three children of the 1st Respondent who were entrusted in the Objector’s care.

In 1993, the Objector procured the title for the two parcels Machakos/Matuu/230 and Machakos/Matuu/238, and she constructed twelve rental units on parcel Machakos/Matuu/230 to generate income for herself. After the deceased died in 1995 the Objector retained the two title deeds in her custody. The 1st Respondent returned in 1999, five years after the deceased’s burial and started claiming land, and that she was reminded by the elders about her parcel which she had sold off. The 1st Respondent then started the succession process without informing the Objector.

In addition, that on 12th June 2015, some people demolished the Objector’s rental units on Machakos/Matuu/230, and the 2nd Respondent presented titles bearing his names for parcels Machakos/Matuu/230 and Machakos/Matuu/238, and showing that the succession process had already been taken out with the 1st Respondent as the administrator to the estate. Further, that the 1st Respondent also has intentions to sell Machakos/Kangonde/456 where they had their joint matrimonial home to the 2nd Respondent, thus rendering them homeless.

The Objector deposed that the documents used by the 1st Respondent in the succession cause namely the Chief’s letter, death certificate and title were all acquired in a fraudulent manner, as the Objector was in possession of the original title deeds and death certificate. She further averred that the existence of fraud was demonstrated by the existence of two different death certificates which had different details of entry.

The Response

The 1st Respondent filed a replying affidavit sworn on 21st January 2016, wherein she averred that the Objector did not marry Monica Syombua under the “iweto” Kamba custom. The 1st Respondent denied that she had been in conflict with the deceased and left her matrimonial home. She further denied being

divorced or separated with the deceased.

According to the 1st Respondent, she proceeded to petition for letters of administration after having agreed with the Objector in 2005 to do so, on account of the Objector not having a national identity card. Further, that they had an agreement that the Objector would get 19 acres from Machakos/Kangonde/456. The 1st Respondent contended that the 2nd Respondent had lawfully obtained the title to Machakos/Matuu/238 after purchasing the same from the deceased. Finally, that nothing was concealed from the Objector during the process, and she has been aware of the proceedings herein, and coming to court after 11 years showed that she had ulterior motives.

The Submissions

The Objector's application was canvassed by way of written submissions. The Objector's learned counsel, Kalwa and Company Advocates, filed submissions dated 25th February 2016, in which they submitted that the Objector's application satisfied the threshold of conditions envisaged by the provisions of Order 76 of the Law of Succession Act, as the 1st Respondent had deliberately omitted the Objector from the list of beneficiaries even when she averred that she knew of her existence in the replying affidavit.

In addition it was submitted that the 1st Respondent had omitted some assets from the list assets. The Objector queried how the 1st Respondent had obtained title to Machakos/Matuu/230 yet the Objector had the originals, and that she had concealed how she got the death certificate. Further, it was argued that the 1st Respondent had colluded with the local chief or had failed to explain to the said chief that he needed to list all the beneficiaries of the deceased.

Lastly, it was urged that there was fraud in form P&A54 which shows that the 1st Respondent was to get the whole of Machakos/Kangonde/456, even when she had averred that there was an agreement that the Objector would get 19 acres. It was argued that if the 2nd Respondent had lawfully acquired the parcel of land known as Machakos/Matuu/238, he would have been included as a beneficiary in the grant. Finally, it was submitted that the 1st Respondent had failed to administer the estate in accordance to the law, and was wantonly disposing the same to third parties in total disregard to other beneficiaries.

J.T.& Nzioki Advocates, the learned counsel for the 1st and 2nd Respondents filed submissions dated 21st March 2016, wherein it was argued that the Objector had not proven that she had married "iweto" under the Kamba customary law. It was stated that the Objector had agreed verbally that the 1st Respondent obtains the letters of administration, but she be given 19 acres of land in Machakos/ Kangonde/456. It was also argued that the Objector's allegations that the 1st Respondent had separated with the deceased had not been proven. Finally, that the Objector was guilty of unreasonable delay by coming to court after 11 years.

The Issues and Determination

I have read and carefully considered the pleadings and submissions made by the Petitioner. The issue to be decided is whether the 1st Respondents' grant of letters of administration should be revoked. This court has jurisdiction to revoke or annul the grant as is clearly set out in section 76 of the Law of Succession Act (Chapter 160 of the Laws of Kenya) which provides as follows:

"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-

(a) that the proceedings to obtain the grant were defective in substance;

(b) that the grant was obtained fraudulently by the making of a false statement or by the

concealment from the court of something material to the case;

(c) that the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant notwithstanding that the allegation was made in ignorance or inadvertently;

(d) that the person to whom the grant was made has failed, after due notice and without reasonable cause either-

(i) to apply for confirmation of the grant within one year from the date thereof, or such longer period as the court has ordered or allowed; or

(ii) to proceed diligently with the administration of the estate; or

(iii) to produce to the court, within the time prescribed, any such inventory or account of administration as is required by the provisions of paragraphs (e) and (g) of section 83 or has produced any such inventory or account which is false in any material particular; or

(e) that the grant has become useless and inoperative through subsequent circumstances.”

In the present application the Respondents have not contested the Objector's averments that she was a wife of the deceased. As regards the Objector's claim to the portions of land known as Machakos/Matuu/230 and Machakos/Matuu/238, the 1st Respondent claims that the said parcels were sold by the deceased to the 2nd Respondent, but none of the Respondents produced any evidence of such sale. The 1st Respondent has also acknowledged that the Objector was entitled to get 19 acres from Machakos/Kangonde/456.

I have perused the Petition for Letters of Administration Intestate, and affidavit in support of the said Petition filed herein by the 1st Respondent on 15th September 2005. The Objector is not listed therein as one of the beneficiaries of the estate of the deceased despite the alleged agreement with the 1st Respondent. Likewise, the attached consent by the beneficiaries does not have the consent of the Objector, nor is she listed as a beneficiary in the letter dated 4th March 2005 from Sebastian Muia Mang'ee, the Chief of Kangonde Location in Matuu.

The summons for confirmation of grant dated 23rd February 2007 and filed in court on 8th March 2007, and affidavit in support thereof also does not include the Objector as one of the beneficiaries. There is no consent by the beneficiaries to the said summons for confirmation on record. The said confirmation sought to distribute the properties of the deceased namely Machakos/Kangonde/456 and Machakos/Matuu/230 to the 1st Respondent.

Lastly, the summons for rectification of grant dated 11th September 2013 which sought to include the property known as Machakos/Matuu/238 as one of the assets of the deceased, and to have the same registered in the name of the 2nd Respondent does not attach any evidence that the 2nd Respondent bought from, and fully paid for the said property to the deceased as alleged.

I therefore find from the foregoing that there was concealment of material facts and/or untrue allegations made by the 1st Respondent, and that any and all of the distribution of the deceased's estate so far has been illegal. In addition, since the Objector disputes that the 1st Respondent is a lawful wife of the deceased, these succession proceedings will require to start afresh.

I accordingly order as follows:

1. The grant of letters of administration intestate issued to Munyiva Muli on 24th March 2006 with

respect to the estate of Muli Wambua alias Muli Wambua Ngungu be and is hereby revoked.

2. The Certificate of Confirmation of a grant issued to Munyiva Muli on 26th January 2009 with respect to the estate of Muli Wambua alias Muli Wambua Ngungu be and is hereby revoked.

3. The “Rectified” Certificate of Confirmation of a grant issued to Munyiva Muli on 28th October 2013 with respect to the estate of Muli Wambua alias Muli Wambua Ngungu be and is hereby revoked.

4. Any distribution, transfers and dispositions of any kind to and/or by Munyiva Muli and Gitonga Kamundi of the deceased’s properties known as Machakos/Kangonde/456, Machakos/Matuu/230 and Machakos/Matuu/238, and any other subsequent dealings with the said properties be and are hereby declared unlawful and null and void and shall be cancelled forthwith.

5. The Objector and 1st Respondent are at liberty to commence fresh administration proceedings with regards to the estate of Muli Wambua alias Muli Wambua Ngungu.

6. There shall be no order as to costs.

Orders accordingly.

Dated, signed and delivered in open court at Machakos this 14th day of June 2016.

P. NYAMWEYA

JUDGE