



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

SUCCESSION CAUSE NO. 35 OF 1995

IN THE MATTER OF THE ESTATE OF MUMBI MANYARA (DECEASED)

JANE WANJIRU MUIRURI.....BENEFICIARY/1ST APPLICANT

GICHEHA MANYARA MBOGO.....ADMINISTRATOR/2ND APPLICANT

VERSUS

VIRGINIA WARUGURU MBOGO (suing as the legal representative of the

estate of CHARLES MBOGO MANYARA (Deceased).....**BENEFICIARY/2ND RESPONDENT**

DAVID MUNGAI WANJIKU.....BENEFICIARY/2ND RESPONDENT

SAMUEL RUKUNGU KAMAU.....PURCHASER/3RD RESPONDENT

PETER CHEGE MWANGI.....PURCHASER/4TH RESPONDENT

RULING

By summons for revocation or annulment of grant dated 29th February, 2016, Jane wanjiru Muiruri, a beneficiary and Gicheha Manyara Mbogo, the administrator of the estate of Mumbi Manyara (hereinafter the applicant) seek orders:

1. That the confirmed Grant of Letters of Administration intestate to GICHEHA MANYARA MBOGO made on the 3rd day of June, 1996 be revoked and/or annulled.
2. That provision be made for the cost of this application.

The application is grounded on the affidavit of the applicants and on grounds that:

1. That the proceedings to obtain the grant were defective in substance
2. That the grant does not provide for full administration of the estate as the identity of the ultimate beneficiaries of a portion thereof comprising three (3) acres of land and described as Nyandarua/Karati/283 is uncertain, thereby rendering it inoperative.
3. That the 1st applicant was omitted from the list of beneficiaries to the deceased's estate even though she is a natural child of the deceased.

It is the applicant's case that the deceased had during her lifetime bequeathed to her 2 sons 5.5. acres, 4 acres to a daughter Veronica Wanjiku (to be held by her son David Mungai Wanjiku) and 3.5. acres to the 1st applicant. Charles Mbogo Manyara, a son, objected to this arrangement claiming a larger share being the older son. An agreement was reached that 0.5. acres be added to the said Charles to be excised from the applicants' 3.5. acres, leaving her with 3 acres.

Letters of administration were applied for by the 2nd applicant herein. On the advice of the 2nd applicant, the 1st applicant's name was not listed as a beneficiary as Charles Mbogo Manyara, objected to the inclusion of the 1st applicant as a beneficiary on the basis that she was married. The said Charles had a history of violence and 2nd applicant acceded to his demands.

The application is opposed. The gist of the opposition as particularised in the Replying affidavit of Virginia Waruguru Mbogo (a legal representative of Charles Mbogo Manyara) is that the 3 acres in contention were to be held in trust by the administrator for others (sic). She goes ahead to state that her son occupies half of the 3 acres which portion was rightfully given to him through his father. It is urged that the court should not interfere with the whole estate as the only issue is the determination of the trust in respect of the 3 acres.

I have had regard to the application and the affidavits on record. It is not denied that the 1st applicant is a child of the deceased. It is clear from the record that this fact was concealed during the application for the grant. The proceedings to obtain grant were obviously defective in substance.

I note that all other beneficiaries, other than the 1st applicant were equitably provided for. 3 acres were to be held by the administrator in trust of others (sic). This was an ambiguous provision as it is not known who are "others".

I agree with the respondents that since only the 3 acres to be held in trust are in contention, it would not be in the interest of all the parties to put the whole estate in disarray by revoking the grant herein.

It is however, in the interest of Justice and fairness that the administrator be compelled to transfer the 3 acres said to be held in trust to the 1st applicant. To achieve this, and pursuant to the wide powers of this court bestowed by **Section 47** of the **Law of Succession Act** and **rule 73** of the **Probate and Administration rules**, it is justifiable for this court to invoke its inherent powers and proceed to rectify the grant in terms that the 3 acres said to be held in trust for others shall be allocated to the 1st applicant. The confirmed grant is so rectified.

The same is hereby recalled and a fresh one to issue indicating the 1st applicant as the heir of the 3 acres currently held in trust by the 2nd applicant.

Dated, Signed and Delivered at Nakuru this 8th day of June, 2016

A. K. NDUNGU

JUDGE