



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MURANG'A

SUCCESSION CAUSE NO 397 OF 2013

(FORMERLY NYERI HC SUCCESSION CAUSE NO.617 OF 2012)

IN THE MATTER OF THE ESTATE OF JOSPHAT MWANGI KIMEMIA, DECEASED

ROSE WANGECHI MWANGIAPPLICANT

VERSUS

JANE NJERI MWANGI.....ADMINISTRATOR

A M E N D E D J U D G M E N T

1. The Applicant, ***Rose Wangechi Mwangi***, applied herein by **summons dated 21/06/2012** for revocation of grant issued in respect to the Deceased's estate on 16/02/2012 and confirmed on 22/02/2012 in ***Murang'a SPM Succession Cause No 69 of 2011***. Some of the grounds for the application appearing on the face thereof are the standard statutory grounds (**section 76** of the ***Law of Succession Act, Cap 160***), to wit -

- (i) That the proceedings to obtain the grant were defective in substance.
- (ii) That the grant was obtained fraudulently by making false statements, or by the concealment from the court of something material to the case.
- (iii) That the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant.
- (iv) That some of the beneficiaries were not notified when the succession cause was filed.
- (v) That the Administrator obtained the grant without obtaining "the chief's letter"

There is a supporting affidavit sworn by the Applicant in which she claims to be a wife of the Deceased, along with the Administrator.

2. In her replying affidavit filed on 25/07/2012 the Administrator denied that the Applicant was a wife of the Deceased, and that she was the only wife the Deceased had. She also denied that the first (6) children named in paragraph 6 of the supporting affidavit were the Deceased's children as they bore a different family name; she also denied that the other children named by the Applicant who bear the Deceased's name were the Deceased's children. She labelled the Applicant a stranger who was trying to get what does not belong to her through the back door.

3. On 24/01/2014 the Applicant filed a further (supplementary) affidavit. She deponed, *inter alia* -

(i) That she got married to the Deceased under Kikuyu customary law in 1970.

(ii) That the Deceased had 2 parcels of land – LOC 2/KANGAU/2091 and LOC 2/KANGARI/2093.

(iii) That on 07/07/2010 clan elders “sat down concerning the inheritance” of the Deceased’s estate, and agreed that the same be shared equally between his two wives – namely herself and the Administrator.

(iv) That, in effect, the clan elders’ decision was adopted as the order of the court in Kigumo Land Disputes Tribunal (LDT) Case No.52 of 2006.

(v) That pursuant to that order the Applicant and her children were allotted 0.28 Ha in parcel LOC 2/KANGARI/2091, and that they are in occupation up-to-date.

(iv) That she subsequently learnt that the Administrator had secretly obtained the grant which is now sought to be resolved or annulled.

4. To the further affidavit is annexed, *inter alia*, an order issued in ***Kigumo SRM L.D.T. Case No 52 of 2006***. The contents of that order are as follows-

“ORDER

THIS CASE COMING UP for hearing on 22nd June, 2007 for the application dated 27th April, 2007 before me S.M. MOKUA – SRM in the presence of plaintiff/applicant and defendant/respondent.

AND UPON CONSIDERING the application herein, IT IS HEREBY ORDERED THAT:-

(i) JOSPHAT MWANGI KIMEMIA’s land parcel number Loc 2Kangari/2091 be divided into two equal shares between his two wives in accordance with Kikuyu Customary Law.

(ii) ROSE WANGECHI to occupy the western portion and JANE NJERI the eastern side.

(iii) The sub-division to be conducted by a licensed surveyor in the presence of the tribunal (Kigumo Land Disputes Tribunal).

(iv) Compensation for the use of ROSE WANGECHI’s tea and destruction of her house be a matter for a civil suit.

(v) The objector JANE NJERI MWANGI to pay cost to the claimant.

Dated this 22nd day of June 2007

S.M. MOKUA

SENIOR RESIDENT MAGISTRATE

KIGUMO

Issued under my hand and the seal of the court this 13th day of July, 2007

S.M. MOKUA

SENIOR RESIDENT MAGISTRATE

KIGUMO”

5. There is also annexed to this affidavit a report by one Joseph M. Njoroge, c/o District Surveyor’s office, Murang’a. That report was to the effect that he carried out a survey exercise pursuant to the order of the court, by which the Applicant was allotted 0.28 Ha on the western side of land parcel LOC. 2/KANGARI/2091 while the Administrator was allotted a similar portion on the eastern side.
6. On 03/12/2014 in court learned counsel for the Applicant pointed out in court that the value of the estate when the grant was issued was well over the then limit of the pecuniary jurisdiction of the lower court at KShs. 100,000/00. On 16/04/2015 learned counsel also pointed out in court to the Administrator’s learned counsel that the order in Kigumo SRM LDT Case No 52 of 2006 had indeed recognized the Applicant as the Deceased’s wife, which order was still in place and had not been set aside. The response of the learned counsel was simply that both the issues of jurisdiction of the lower court and the Applicant’s claimed relationship to the Deceased were disputed.
7. On 16/04/2015 I ruled that with the material now before the court, *prima facie*, oral evidence was no longer necessary to dispose of the summons for revocation, and I directed that the same be canvassed by way of submissions upon the affidavits on record. However, I further directed that should the need arise in the course of submissions, an order for oral evidence may be subsequently made.
8. Learned counsels for the parties then chose to file written submissions. The Applicant’s submissions were filed on 05/10/2015 while those of the Administrator were filed on 02/11/2015. Initially judgment was scheduled for 11/12/2015, but I proceeded on my annual leave on 30/11/2015, to resume duty on 01/02/2016. So, judgment was re-scheduled.
9. I have read and considered the written submissions. Let me deal with the issue of the jurisdiction of the lower court at the time the grant sought to be revoked was issued. It is common ground that at that time (and until the passing and coming into force of the new **Magistrates Courts Act, No 26 of 2015**) the lower courts, where there was no High Court, and the concerned magistrate had been duly gazetted for that purpose by the Chief Justice, could only deal with estates of deceased persons whose gross value did not exceed KShs. 100,000/00 (**section 48(1)** – since repealed and replaced – of the **Law of Succession Act, Cap 160**).
10. The estate of the Deceased herein comprised two parcels of land – LOC 2/KANGARI/2091 and LOC.2/KANGARI/2093 with a combined acreage of 1.12 Ha (2.77 Acres approximately). In February 2012 nearly 3 Acres of agricultural land in Murang’a County could not have been valued at a maximum of KShs 100,000/00. Even without a valuation report, the court is entitled to take judicial notice of this fact as the high value of land, particularly in Central Kenya, is a matter of notoriety.
11. I hold that the gross value of the Deceased’s estate herein far exceeded the limit of the pecuniary jurisdiction of the lower court when the grant sought to be revoked herein was issued.
12. There is also the issue of the Applicant’s relationship to the Deceased. Evidence has been placed before the court that the issue was subject to deliberations before clan elders after the Deceased died, and the elders found that the Applicant was a widow (along with the Administrator) of the Deceased. The decision of the elders appears to have been adopted by a court of law as its judgement in Kigumo SRM LDT Case No 52 of 2006 which ordered that one parcel of the Deceased’s lands be shared equally between his two widows “in accordance with Kikuyu Customary Law”. Sub-division of the land was done by a surveyor who reported back to court, and the Applicant says that she and her children are in occupation of their portion “up to date”.
13. Formal sharing of the estate would of course be subject to proper proceedings under the *Law of Succession Act*; but that is not to say that other proceedings with regard to use and occupation of the Deceased’s lands amongst his beneficiaries would be illegal. Such proceedings would in fact be powerful evidence in any succession proceedings under the *Law of Succession Act*.

14. I am therefore satisfied that the Applicant has placed before this court sufficient material to warrant revocation of the grant issued to the Administrator to enable the issue of succession to the estate of the Deceased Josphat Mwangi Kimemia to be re-opened.

15. In the event I will allow the summons for revocation of grant in the following terms –

(a) The grant issued to Jane Njeri Mwangi on 16th February 2012 in ~~Kigumo~~ Murang'a SPM Succession Cause No 69 of 2011 be and is hereby revoked.

(b) The subsequent order of that court of 22nd February 2012 confirming the grant be and is hereby set aside, and the certificate of confirmation dated 22nd February 2012, is hereby cancelled.

(c) All the titles issued to the beneficiaries named in the aforesaid certificate of confirmation of grant (now cancelled) are also hereby cancelled, and land titles LOC 2/KANGARI/2091 and LOC 2/KANGARI/2093 shall revert unto the name of the Deceased Josphat Mwangi Kimemia.

(d) The original lower court file shall be returned to the lower court where the Applicant herein shall be at liberty to file an objection to issuance of grant to the Petitioner and cross-petition.

(e) The matter shall then there proceed in the normal way to its logical conclusion.

(f) Parties shall bear their own costs of the proceedings in this court.

Those shall be the orders of the court.

DATED AND SIGNED AT MURANG'A THIS 10TH DAY OF MARCH, 2016

H.P.G.WAWERU

JUDGE

DELIVERED AT MURANG'A THIS 11TH DAY OF MARCH 2016

AMENDED THIS 31ST DAY OF AUGUST 2016