



REPUBLIC OF KENYA

HIGH COURT AT NAIROBI

MILIMANI LAW COURTS- FAMILY DIVISION

**IN THE MATTER OF THE ESTATE OF EVANSON GICHURU MUREITHI alias EVANS
GICHURU MURITHI (DECEASED)**

SUCCESSION CAUSE NO. 2933 OF 2008

BETWEEN

MARY RUGURU NJOROGE APPLICANT

AND

PETER MURIITHI GICHURU RESPONDENT

RULING

INTRODUCTION

The deceased, Evanson Gichuru Mureithi died on 16th February, 2002 and Mary Ruguru Njoroge (hereafter 'the Applicant') and Peter Muriithi Gichuru (hereafter 'the Respondent') were appointed on 14th May, 2009, as the Administrators to the deceased's Estate. Subsequently, on 27th May, 2013, the Grant was confirmed and thereby resulting to the distribution of the deceased Estate in the following terms: Dagoretti/Uthiru/287 shared equally between the two Parties, while Maela/Ndabibi Block 2/411 Tarabete and 1/3 undivided share of Dagoretti/Waithaka/182 was vested to Peter Muriithi Gichuru absolutely.

This Ruling is in relation to the Application dated 24th February, 2015, filed by the Applicant in which she seeks the following orders:

1. ...

2. *The Grant issued and confirmed on 27th May 2013 be revoked.*

3. *That pending the hearing and determination of Prayer (2) above, this Honourable Court be pleased to grant preservatory orders preserving the property of the Estate by stopping the Respondent from dealing with the properties of the Estate pending the hearing and determination of the Application.*

4. *That this Honourable Court be pleased to order that the Estate be distributed in equal shares between the beneficiaries.*

5. That this Honourable Court be pleased to give directions and/or any other orders as it may deem necessary and expedient.

6. That costs of this Application be provided for.

THE APPLICANT'S CASE

In her Affidavit in support sworn on 24th February 2015, the Applicant deponed that she is the deceased's daughter and a beneficiary and co-administrator of the deceased's Estate.

She contended that the deceased's Estate comprises three properties namely:

- a. Dagoretti/Uthiru/287
- b. Maela/Ndabibi Block 2/411 Tarabete
- c. A portion of all that property described Dagoretti/Waithaka/182.

It was her further deposition that as per the Grant, she was given half share of the parcel of land Dagoretti/Uthiru/287 and the Respondent the other half and the other properties were absolutely vested in the Respondent.

The Applicant contended that the Grant was confirmed in her absence and her consent was never obtained and as such, she did not consent to the distribution of the Estate. It was therefore her argument that the Grant herein was confirmed fraudulently and was obtained without the benefit of full facts and hence it is prudent for the same to be revoked.

In her Written Submissions dated 21st January 2016, she reiterated her depositions and asserted further that there is an error apparent on the face of the record and which has resulted to her being disinherited. In that regard, she relied on the decisions in **JAMLECK MAINA NJOROGE VS MARY WANJIRU MWANGI, SUCCESSION CAUSE NO. 1817 OF 2005** and **A.S AND 2 OTHERS VS S.A.M, MOMBASA SUCCESSION CAUSE NO. 367 OF 2006** in support of her contention that she had made out a case to merit the granting of the orders sought as per **Section 76** of the Law of **Succession Act**. For the foregoing reasons, she urged the Court to order the equal distribution of the said property and grant the orders sought in the present Application.

THE RESPONDENT'S CASE

In response to the Application, the Respondent filed an Affidavit sworn on 4th November 2015.

It was his deposition that he and the Applicant are the only beneficiaries and administrators of the deceased's Estate and that in 2008, they jointly petitioned for the Grant of Letters of Administration, without any undue influence on either Party of misrepresentation of fact, duress, mistake or fraud and that the same was confirmed and later amended as it stands, on the request of the Applicant.

He asserted that the Applicant transferred the title to Dagoretti/Uthiru/287 to three titles namely, Dagoretti/Uthiru/2275, 2274 and 2273 and in that regard, she disposed 2273 and 2274 to one Mr. Stanley Magu Gateri. Further, that at the same period, she proceeded on to transfer the deceased's properties to him as per the confirmed grant.

It was his averment that the property, Dagoretti/Waithaka/182 was as well transferred to him without any coercion and as such, the allegations that she was not present at the time of confirmation and did not consent to the mode of distribution is untruthful and void.

In the Respondent's view, there is no Estate of the deceased which has not been disposed of to the

beneficiaries and even to the third party who has so far benefitted from the same and as a result therefore, the Court ought not to entertain such a frustrated beneficiary who has discharged her performance and even benefited by sale.

He finally asserted that the present Application is frivolous, vexatious, bad in law and has been overtaken by events and as a result, it ought to be dismissed with costs.

DETERMINATION

The key question for determination is whether the Applicant has made out a case to warrant the revocation of the Confirmed Grant. In that regard, **Section 76** of the **Law of Succession Act** gives this Court the powers to revoke a grant provided the conditions stipulated therein have been met. It states that:

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

iv. That the grant has become useless and inoperative through subsequent circumstances.

In the present case, the Applicant seeks to have the confirmed grant revoked alleging that her consent was neither sought nor obtained and that the same was confirmed in her absence. She contended further that she never consented to the mode of distribution of the Estate. The Court notes that the Parties herein are the only survivors and beneficiaries to the deceased's Estate and as such, it follows that the distribution of the Estate should vest to them in equal shares as per **Section 38** of the **Law of Succession Act**. The Section provides that:

Where an intestate has left a surviving child or children but no spouse, the net intestate estate shall, subject to the provisions of sections 41 and 42, devolve upon the surviving child, if there be only one, or shall be equally divided among the surviving children.

In the circumstances, the purported distribution as per the confirmed grant is not in line with the law as the Respondent has taken a larger portion of the deceased's Estate and that should not be so. It should be noted further that **Article 27 (1)** of the **Constitution** guarantees every person the right to the equal protection and benefit of the law. Furthermore, **sub-clause (3)** thereof states that:

Women and men have the right to equal treatment, including the right to equal opportunities in

political, economic, cultural and social spheres.

It is therefore the expectation of the law that all persons be treated equally and to enjoy the equal protection and benefit of the law. This includes the full benefit by the Applicant to have his share of the Estate as per the Law of Succession Act and any purported distribution of the Estate that is contrary to the Law is null and void.

The Court notes that as per the transfer documents attached on the Respondent's Affidavit, the properties Maela/Ndabibi Block 2/411 Tarabete and Dagoretti/Waithaka/182 were transferred to him on 26th July 2015 during the pendency of these proceedings and as such, the Court is inclined to declare the same a nullity.

DISPOSITION

Based on my reasoning above, the evidence on record and analysis, the Court orders that:

- a. The Confirmed Grant dated 27th May 2013 is hereby revoked.**
- b. The deceased's Estate shall be distributed in equal shares to:**
 - i. Mary Ruguru Njoroge; and**
 - ii. Peter Muriithi Gichuru**
- c. Let each Party bear its own costs.**

DATED AND SIGNED IN ON THI 31ST DAY OF OCTOBER 2016

M.W.MUIGAI

JUDGE

In the presence of

.....
.....
.....