



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
SUCCESSION CAUSE NO. 264 OF 2013

IN THE MATTER OF THE ESTATE OF JOSEPH WAWERU MUCHAI

TERESIA WAMBUI WAWERU

HANNAH WAIRIMU WAWERU

SAMMY MUCHAI WAWERU

ESTHER WANGARI WAWERU

RICHARD NJOROGE KARIGO

EDWIN MUCHAI KARIGO

HANNAH WAIRIMU KARIGO.....BENEFICIARIES/APPLICANTS

VERSUS

CHARLES NJUGUNA WAWERU.....ADMINISTRATOR/RESPONDENT

JUDGMENT

1. Charles Njuguna Waweru petitioned for a grant for the estate of Joseph Waweru Muchai on the 23/1/12 in the Chief Magistrate's Court at Kiambu. He was granted a grant of letters of administration on 6th March 2012. On the 12/4/12 he was issued with a certificate of confirmation of grant. He was the sole beneficiary to Kiambaa/Kanunga/T.158.

2. On the 8/2/13 Sammy Muchai Waweru and Edwin Muchai Kariga hereinafter referred to as the applicants filed a summons for revocation or annulment of grant under Rule 44 (1) of the Probate and Administration Rules and Section 76 of the Law of Succession Act Cap 160. The application is dated the 31st of December 2102.

3. The affidavit in support of the application is sworn by Sammy Muchai Waweru a son to the deceased, who states that he has the full authority of his co-applicants who are in person relate to the deceased and beneficiary entitled to his estate. In his affidavit he explains that the deceased is married twice in his life but was divorced from his first wife at the time of his death. That out of the said 2 marriages the deceased had the following children.

Children of first wife – J W (divorced in 1973)

1. Charles Njuguna
2. Hannah Wairimu
3. Anthony Muchai

Children of Teresia Wambui (sole Surviving widow)

1. Hannah Wairimu Waweru
2. Sammy Muchai Waweru
3. Esther Wangari Waweru

4. That upon being divorced J W retired to her parent's home in Githurai Kimbo and had 4 other children. That upon the deceased death the respondent who is a son to the deceased from his divorced wife proceeded to take out a grant at Kiambu Principal Magistrate at Succession Cause No. 18 of 2012. This was done discretely and fraudulently by the administrator as he proceeded without the knowledge, concurrence or consent of all other persons beneficially entitled to the deceased's estate.

5. That they discovered the apparent fraud when the respondent attempted to evict the family of the late under one John Karigo Muchai (deceased) from the deceased's sole asset Kiambaa/Kanunga T. 158. On making inquiries at Kiambu Lands Office, they discovered that the respondent had caused the said property to be registered in his favor pursuant to the confirmed grant obtained in Succession Cause 18 of 2012. That the children of the deceased under are the ones entitled to the parcel of land. That on perusing the court record they found out that the grant was based on false and misleading statements, fraudulent documents. That the certificate of death used by the respondent was forgery. That the respondent filed the petition as the only surviving beneficiary of the deceased a fact that was not true as his mother is still alive and is in the USA and so are his other siblings. That the value of the property was 1,000,000/- and not Kshs.100, 000/- as indicated. That the subordinate court had no jurisdiction to issue grant.

6. The respondent Charles Njuguna Waweru filed a replying affidavit on the 2/7/14. He depones that the 3rd applicant Sammy Muchai Waweru is his step brother who resides in Nakuru and his step mother Teresia Wambui Waweru is the 1st applicant. The 2nd and 4th applicants are his step sisters, i.e. Hannah Wairimu Waweru and Esther Wangari Waweru. That the 5 genuine family members of the deceased amicably divided the 3 Nakuru properties and separate letters of administration were taken out, one was granted to Teresia Wambui Waweru and the single Kiambu property Title No. **Kiambaa/Kanunga/T.158** was given to him to take out the letter of administration at Kiambu Law courts thus the issue of fraud and concealment of material fact to follow beneficiaries cannot arise. That the Nakuru family properties which were left under the names of his father Joseph Waweru Muchai in 1984 are as follows;

- a) Family shamba at Langa view at Ngashura 10 acres now worth Kshs. 10million now registered under Sammy Muchai Waweru's name as Trustee for his siblings.
- b) Family shamba Dundori 10 Acres worth Kshs.10 million now registered under Teresia Wambui Waweru's name as administratrix.
- c) Disposed properties; Langalanga Estate Nakuru ½ Acre with House work Kshs 5 million sold in 1996 by Teresia Wambui Waweru as administratrix.

7. That their father resided in **Kiambaa/Kanunga/T.158 (0.25 Ha.)** where he was brought up and that he has stayed all along throughout his life a fact known to the beneficiaries. That the 5th, 6th and 7th are strangers and not beneficiaries to his father's estate as they were not dependents. That he has had cases with the Karigo's but their claims have always been dismissed since they are not the lawful heirs or beneficiaries or dependents of the deceased, nor was his father a trustee of John Kanga Muchai. That the 2 death certificates were investigated by the police and found to have been lawfully obtained in the

respective Government Death Registries and not manufactured in River Road as alleged. That he has sold and transferred plot no. **Kiambaa/Kanunga /T.158** to a 3rd party **Eliud Njoroge Kiarie** who served them with a notice to vacate. That his stepmother Teresia Wambui Waweru is the administrator of the estate of his father's 3 Nakuru properties which were amicably shared out and he was mandated to follow up the Kiambu property T.158 as the sole beneficiary. That there is no fraud, concealment or lack of consent from the 5 beneficiaries. He seeks that order of prohibition granted on the 28/10/13 to be set aside and the sums for revocation dismissed. His request is that the court should transfer this file to Nakuru court where the original succession is to and the 4 assets for the deceased so that the court revisits the issue of who are the beneficiaries and heirs of the deceased.

8. Eliud Njoroge Kiarie filed an affidavit dated the 1/7/14. He depones that he brought plot no. **Kiambaa/Kununga/T.58** and completed pay and on the 4/4/14 and that a title deed has been dully issued to him by the Kiambu Lands Registry. Subsequently he gave a notice to the occupants of the said plot to vacate by 15/5/14. That on the /5/2014 he learnt that the 5, 6, &7 applicants were claiming on interest in the said plot. That he is a bonafide purchase for value and the plot belongs to him having brought it.

9. On the 1/7/14 the respondent filed an application under Rule 49 of the P & A rules seeking to have the application dated 31/12/12 struck out, that it was fraudulently filed using the names of the 1st, 2nd, 3rd and 4th beneficiaries without their knowledge or consent by the 5th, 6th and 7th respondents who are strangers to the estate of Joseph Waweru Muchai. That the summons is defective as it does not propose the rightful administrators nor does it list out all the assets, no list of proposed beneficiaries or consent to take out the summons. That the exparte order of prohibition against plot T.158 given on the 28/10/13 be set aside and in the alternative the matter be transferred to Nakuru through court where the original succession of the deceased was filed. In his affidavit in support he depones that he was not aware of the exparte court order of 28/10/13, the said order was not served on him nor was it registered against the title between 10/1/14 to 10/4/14 when it changed ownership to Eliud Njoroge Kiarie. He reiterates what is stated in his affidavit dated the 1/7/14 and avers further that Sammy Muchai and Teresia Wambui confirmed to him and his lawyers that they did not lodge the summons for revocation of the grant, that his step mother and step sisters are abroad and that they did not sign the consents.

10. Teresia Wambui Waweru the 1st beneficiary filed a replying affidavit in response to the administrators application dated the 1/7/16. Teresia Wambui the surviving widow of the deceased in her replying affidavit dated 9th December 2014 avers that she had the authority of the 2nd to 6th beneficiaries to swear the affidavit. That she is the validly constituted administrator of the estate of the deceased pursuant to a grant dated 24/8/84 obtained through succession cause no. 6 of 1984 at Nakuru High Court. She avers that the 2nd, 3rd and 4th are her children while 5th, 6th and 7th are the beneficiaries in virtue of being her nieces and nephews who are orphans after the demise of her late husband's brother John Karigo Muchai and who are in possession of **Title Number Kiambaa/Kanunga/T.158**. She states that the said beneficiaries are entitled to the said parcel of land as the same was held in trust by her late husband Joseph Waweru Muchai. She avers that the administrator is the son to the deceased's 1st wife whom the deceased divorced in 1973 and had since relocated to the USA with her children in the year 2000. She denies the respondent's allegations that the application for revocation was made without her knowledge or that of her children stating that in 2012 while at the USA she learnt that the administrator had made attempts to evict them from the suit parcel of land in Kanunga being far away she had instructed Edwin Muchai Karigo to investigate the circumstances in which the respondent was claiming title to the said property and that is when she learnt that the applicant had petitioned for grant of letters of administration before the Kiambu law court in Succession Cause no.18 of 2012 and had obtained and confirmed a grant having lied to the court that he was the deceased's sole beneficiary. She had then instructed her son Sammy Muchai and Edwin Muchai Karigo to take appropriate steps to have the said grant annulled. That despite being served with Justice Kimaru's orders of 28/10/13 but disregarded the same and proceeded to sell the said parcel of land to a third party. However, the Land District at Kiambu refused to register the same and the advocate involved in the said sale informed this court of the applicant's non-compliance. She avers that the applicant refused to enter appearance to the proceedings on time and only did so belatedly when he realized his schemes was falling apart.

11. Charles Njuguna Waweru in his supplementary affidavit dated 25th November 2015 avers that him, his mother and siblings were left out in the Nakuru succession cause no. 6 of 1984 adding that Teresia in her affidavit did not disclose that she included her nieces and nephews in the deceased's succession cause in regards to Title no. **Kiambaa Kanunga/T.158**. Adding that there is nowhere in the original title deed where it was indicated that his father was holding the same in trust for his late brother John Karigo Muchai. That the said Richard Njoroge Karigo, Edwin Muchai Karigo & Hannah Wairimu are not administrators of their father's estate the estate of John Karigo & Hannah Wairimu Karigo and no averments show that the suit parcel of land is one of the property to be shared among them. Adding that at one time the deceased had used the said parcel of land to secure a bank loan. Adding that since Teresia family took up the deceased estate in Nakuru he was content with the family land at Kiambu. That the said parcel of land was lawfully distributed to him by a competent court adding that he should at least get one of his late father's properties and as such the court should not revoke the grant in vain as the same cannot be retrieved from third parties who are currently the registered owners.

12. Parties filed written submissions. I have considered them. The administrator petitioned for a grant of letters of administration on 23rd January 2012. He stated that he was the sole surviving beneficiary of the deceased with only one asset surviving the deceased being **Kiambaa/Kanunga/T.158**. The same was published in the Kenyan gazette on 3rd February 2012. There being no objection the administrator was issued with grant of letters of administration on 6th March 2012 and the same was subsequently confirmed on 12th April 2012 less than six months. The applicants filed an application seeking to revoke the said grant on ground that it was obtained was defective ab initio and that the same was obtained fraudulently by making a false statement and by concealment of material facts to the case and that the said grant was obtained by the making of a false untrue allegation of a fact essential in point of law to justify granting of the grant.

Section 76 of the Law of Succession provides 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;"

13. The administrator petitioned for a grant of letters of administration in regards to the deceased's estate on the 23/1/12 in the Chief Magistrate's Court at Kiambu. He was issued with the same on 6th March 2012 and proceeded to have the same confirmed as the sole beneficiary of the deceased's estate hence taking charge of **Kiambaa/Kanunga/T.158**. The administrator in his own affidavit disclosed that he knew Teresia's family and also that he had other siblings surviving the deceased. In his said petition and confirmation he did not list them nor did he disclose that another petition had been failed earlier in another court. The administrator in so doing concealed something from the court something material to the case. I find that the administrator obtained the grant fraudulently by the making of a false statement. I also note that as he went on with this process he knew that there were other persons, the respondents nieces and nephews who are staying in the said land, yet he went ahead to sell it to a third party. His acts in my view were fraudulent. I therefore find that the grant issued to the administrator on **6th March 2012** and confirmed on **12th April 2012** is hereby revoked on all consequential orders. On the respondents application dated the 1st of July 2014 having granted the order sought in the applicants' application to revoke the grant in my view the said application fails. Parties are at liberty to follow up the issues raised on Succession cause filed in Nakuru. Each party to bear its own cost. It is so ordered.

Signed, dated and delivered this **19th** Day of **October** 2016.

R. E. OUGO

JUDGE

In the presence of:

.....**Applicant**

.....**Respondent**

Ms. Charity

Court Clerk