



REPUBLIC OF KENYA

IN THE HIGH COURT AT KERICHO

SUCCESSION CAUSE NO.179 OF 2008

IN THE MATTER OF THE ESTATE OF MUNYORO MACHARIA – DECEASED

GITHIRI MUNYORO.....APPLICANT

VERSUS

PAUL MAINA KINUTHIA.....RESPONDENT

RULING

1. These proceedings relate to the estate of **Munyoro Macharia *alias* Kinuthia** (deceased) who died on the 27th of September, 1977 domiciled in Murang'a within the Republic of Kenya. It appears from the pleadings that the applicant, Githiri Munyoro, and the petitioner/respondent (hereafter referred to as the respondent), Paul Maina Kinuthia, are sons of the deceased by his first and third wives respectively.

2. By an application dated 30th November, 2015 and amended on 14th March, 2016, the applicant sought revocation of the grant of letters of administration intestate issued to the respondent in this matter on 17th April, 2013 and confirmed on 7th May, 2014. The application is in the following terms:

1. That the grant of letters of administration made on 17th April 2013 and confirmed on 7th May 2014 be revoked.

2. That the costs of this application be borne by the respondent.

3. The application is supported by the applicant's affidavit sworn on 14th March 2016 and is based on the following grounds:

A. That the grant was obtained fraudulently by the making of false statements or by the concealment from the court of material particulars to the case.

B. That the grant was obtained by means of an untrue allegation of fact essential in point of law to justify the grant.

4. In his affidavit, Mr. Munyoro avers that the respondent is known to him as he is his brother. He confirms that their father died on 27th September, 1977, and reiterates the grounds set out in his application that the respondent obtained the grant without involving him and other family members. He further avers that it is only just that the grant be revoked for other family members to benefit.

5. In submissions made on his behalf by learned Counsel, Mr. Mutai, the applicant reiterated his averment that the grant had been obtained by fraudulent concealment of material facts. The respondent had

obtained the grant without informing other family members, and had failed to include the objector in the application for confirmation of grant among the beneficiaries of the estate. Counsel submitted that the applicant's prayer was that the estate of the deceased be restored to its original state given that the petitioner/respondent has subdivided the land and been issued with title deeds in his name and the names of other unknown persons. He also prayed that the estate of the deceased be subdivided amongst the surviving beneficiaries in accordance with their wishes.

6. In response and in opposition to the application, the respondent filed an affidavit in reply. In his affidavit, he averred that the deceased had three wives, his mother being the third wife. The deceased died when the respondent was four years old, while his mother had died when he was two days old.

7. According to the respondent, he and his brother, now deceased, one John Mwangi Kinuthia (Munyoro) had been given a **"letter of grant"** by the applicant and other **"referees"**. He relies on a document dated 18th October 1987 from Samuel Wanyoike Munyoro, who appears from the documents before me to be the applicant's older brother. In the said document, it is stated that administration to the estate of the deceased in this case has not been raised with respect to **"Kamwingi Farmers Company Limited Certificate No. 71 and Parcel No. Chania Ngorongo/900"**. Samuel Wanyoike then indicates in the letter his consent to letters of administration being granted to the respondent herein and his brother, John Mwangi Kinuthia. The applicant and others have signed the said letter as **"referees"**.

8. The respondent further avers that the applicant and members of the first two houses of the deceased had, in 1982, applied for letters of administration to the estate of the deceased in **Succession Cause No 172 of 1982**. They had not named the respondent or any of his siblings as beneficiaries of the estate, nor had they mentioned his deceased mother as a wife of the deceased. It appears that the applicant and his siblings and the step-siblings of the first two houses of the deceased applied for grant of letters of administration to the estate of the deceased situated in Murang'a, but not the two properties mentioned in the letter referred to and exhibited by the respondent.

9. According to the respondent, the applicant (and his siblings) gave him a letter allowing him to be the sole beneficiary and administrator of the estate. He applied in 2008 for letters of administration in respect of the two parcels of land, one of which was situated in Londiani, so he applied for the grant at Kericho.

10. Following his application for the grant and confirmation thereof, and after he had inherited the property which the applicant had said he could inherit, he was served with the application for revocation of grant by the applicant. He states that upon following up to find out why the applicant was seeking revocation, he received from the widow of Samuel Wanyoike documents showing the application for grant of letters of administration intestate made in Succession Cause No.172 of 1982 from which he and his mother and siblings had been excluded.

11. While conceding that he had not informed the applicant about the application in this cause, he explains the omission on the basis that the applicant and his siblings had given him a letter allowing him to inherit the land indicated in the letter, and had not included him in Thika Succession Cause No.172 of 1982. He prayed that the application for revocation of grant be dismissed, noting that the applicant, who was 49 years old in 1982, could have included them in the application for succession in 1982 or mentioned to them that the grant was being filed.

12. In his response on behalf of the applicant, Mr. Mutai observed that in the letter relied on by the respondent, the applicant's signature was the sixth.

His submission, however, was that the document was authorizing the respondent and John Mwangi Kinuthia to be the administrators of the estate of the deceased. There was nothing in the contents of the document that authorized the respondent and John Mwangi Kinuthia to inherit absolutely the estate of the deceased.

13. With respect to Succession Cause No. 172 of 1982, Mr. Mutai submitted that the administrator was one Samuel Wanyoike, not the applicant. According to the applicant, the respondent had failed to prove to

the court that the objector was the administrator and a petitioner and in a position to exclude any of the beneficiaries. In his view, if the respondent had an issue with Thika Succession Cause No. 172 of 1982, he could have challenged that cause instead of proceeding to disinherit other beneficiaries.

Analysis and determination

14. I have considered the respective pleadings and submissions of the parties before me. I have also carefully perused and considered the documents that they rely on in support of their respective positions on this matter. In my view, the sole issue for determination in this application is where justice lies: Whether in revoking the grant of administration issued to the respondent, or in dismissing the applicant's application and allowing the estate of the deceased to lie as distributed in the two grants obtained at different times in different courts by the beneficiaries of the deceased.

15. In making my decision, I bear in mind that the application is brought under section 76 of the Law of Succession Act and rule 44(1) of the Probate and Administration Rules, which sets out the procedure for making an application for revocation of grant. Section 76 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)

16. The question is whether the petitioner/respondent in this matter obtained the grant in a manner that rendered the grant defective in substance, or fraudulently by the making of a false statement, or concealed from the court something material to the case, or made an untrue allegation of a fact essential in point of fact to the case.

17. I have examined the application for grant filed by the respondent. Aside from himself, the respondent/petitioner names in the said application his mother, Priscilla Wanjiku, then deceased, his brother, John Mwangi Kinuthia, also deceased, and his sisters, Elizabeth Wangechi Munyoro, Damaris Muthoni and Milka Njeri Wainaina. As he conceded in his submissions, he did not name the applicant or the other beneficiaries of the estate from the first and second house.

18. His explanation revolves around the letter from Samuel Wanyoike, signed by, among others, the applicant in this case, dated 18th October, 1987. The respondent interprets the letter as giving him and his brother, now deceased, the right to inherit the property named in the letter. The applicant does not deny this, arguing only that the letter allowed the two brothers to be administrators of the estate, but not to inherit the said land.

19. Where does the truth lie? I note that the applicant and the respondent are step brothers. At the time of their father's death, the applicant, who was 48 in 1982, would have been 43, while the respondent was 4 years old. When the application for grant was made in Thika Succession Cause No. 172 of 1982, the respondent, then aged 9, and his siblings, were left out. The documents relied on by the respondent seem to evince an intention on the part of the other siblings of the respondent that he and his brother should benefit from the portion of their deceased father's estate that had not been the subject of the earlier grant.

20. In my view, given the documents that have been placed before me and the general circumstances of

this case, I am not satisfied that the respondent acted in a manner that was intended to deny the other beneficiaries of the estate their inheritance from the estate of their deceased father. Given the relative ages of the applicant, his brothers and the respondent, and the contents of the letter from Samuel Wanyoike which was signed by the applicant and his other siblings, it seems to me that the respondent was entitled to interpret the letter as granting him the right to apply for the letters of administration, and to inherit the portions of their deceased father's estate that had not been included in the earlier grant.

21. Rule 73 of the Probate and Administration Rules, which saves the inherent powers of the Court, provides that ***“nothing in these Rules shall limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court.”***

22. In this case, in my view, the dictates of justice demand that the letters of administration issued to the respondent remain in force. It appears to me that the respondent was justified in understanding the letter dated 18th October 1983 as allowing him and his brother to apply for the letters of administration in respect of the remaining two parcels of their father's estate, and to be the beneficiaries in respect thereof. The applicant was fully aware of the existence of those parcels as far back as 1987, and had signed the said letter as a **“referee”**, though it is not clear what the term was intended to refer to, perhaps as witnesses. He did not take any action with respect to the properties until 2015, 28 years after the letter, and 7 years after the respondent had applied for the grant. What has precipitated the present application at this stage is unclear.

23. In my view, in the circumstances of this case, it is not in the interests of justice to revoke the grant issued to the respondent. Were the Court to ‘restore’ the estate of the deceased to its original state as submitted by Counsel for the applicant, then justice would demand that the entire estate, including the portion that was the subject of the 1982 succession cause in Thika, be restored to the estate, and be the subject of distribution among the beneficiaries.

24. In the circumstances, I find no merit in the application, and it is hereby dismissed with costs to the respondent.

Dated, Delivered and Signed at Kericho this 14th day of October 2016.

MUMBI NGUGI

JUDGE