



REPUBLIC OF KENYA

HIGH COURT AT NAIROBI

MILIMANI LAW COURTS- FAMILY DIVISION

SUCCESSION CAUSE NO. 2304 OF 2008

IN THE MATTER OF THE ESTATE OF KAHENYA KIMANI (DECEASED)

BETWEEN

MARGARET MUTHONI KIMANI.....APPLICANT

AND

MARGARET KAHENYA WAMBUGU.....1ST RESPONDENT

JOYCE NJOKI MACHARIA2ND RESPONDENT

RULING

INTRODUCTION

Margaret Muthoni Kimani (hereafter 'the Applicant') filed Summons Application for Revocation of the said Grant, on 6th July, 2009, in which she sought the following orders:

(1) The Grant of Letters of Administration made to Margaret Kahenya and Joyce Njoki Kahenya on 16th January, 2006, in Limuru Principal Magistrate's Succession Cause No. 49 of 2006, be revoked.

(2) The costs of this Application be provided for.

The matter was however last in Court on 9th November, 2009 and she never took any action on the same. That prompted Margaret Kahenya and Joyce Njoki Kahenya (hereafter 'the Respondents') to file, on 16th November, 2011, a Notice of Motion Application dated 31st October, 2011, seeking to have the present matter dismissed for want of prosecution. In the said Application they sought the following orders:

(1) That this Application filed herein on 6th July, 2009 be dismissed for want of prosecution.

(2) That the costs of this Application and the entire Application be borne by the Applicant and awarded to the Respondents.

The Application for dismissal for want of prosecution was however compromised as Affidavits were filed in regard to the Application for Revocation. This Ruling is therefore in relation to the Application for

Revocation of Grant.

THE APPLICANT'S CASE

In her Affidavit sworn on 30th June, 2009, in support of the Application, the Applicant contended that she is the daughter-in-law of the deceased by virtue of being married to his son, one Joshua Kimani Kahenya, who is also deceased.

She outlined the deceased's children to include the following:

- (a) Alice Wanjiku Kungu (married);
- (b) Joshua Kimani Kahenya (deceased);
- (c) Priscilla Nyambura Kahenya (deceased);
- (d) Lucy Njeru Manji (deceased);
- (e) Grace Wamaitha Njogu (deceased);
- (f) Loice Wanjiru Marubu (married);
- (g) Margaret Wambuio Wambugu (married); and
- (h) Joyce Njoki Macharia (married).

It was her deposition that the deceased's Estate comprises a land parcel known as L.R No. Muguga/Kanyariri/86. According to her, the Respondents herein are married and are therefore not heirs to the deceased's Estate.

Furthermore, following the death of the deceased, the Respondents, vide **Limuru Succession Cause No. 46 of 2006**, were issued with Letters of Administration of the deceased's Estate and the same was confirmed on 17th October, 2007. It was her argument that the said Grant of Letters of Administration was obtained fraudulently and through concealment of material particulars and that they did not reveal to the Court that they were married and that the said parcel of land was left to her by her husband. In that regard, it was also her argument that the Grant was obtained by misrepresentation and concealment of facts.

It was her contention that she, together with her children, have been in occupation of the said parcel of land belonging to the deceased, since 1971 and that the Respondents have transferred the parcel to themselves with a view of defeating her claim to the same.

For the foregoing reasons, she urged the Court to allow the present Application and order the revocation of the said Grant.

THE RESPONDENTS' CASE

The Respondents opposed the present Application through their jointly sworn Affidavit of 1st October, 2009. They stated that they were Petitioners in the **Limuru Succession Cause No. 49 of 2006** and that the matter was duly gazetted in the Kenya Gazette but the Applicant did not lodge any objection. Accordingly, that she has all along been aware of the matter in the Limuru Court but decided to wait until the Grant was confirmed.

It was their assertion that the mode of distribution as per the confirmed Grant is fair to all of them as the Estate was divided equally among them. They denied knowledge that the applicant was married and

stated that the Applicant ought not to have obtained consent from all the surviving dependants to prove that she is acting in good faith.

The Respondents stated further that the Applicant has just come to Court as an afterthought as she had earlier gone to the District Land Office to place a restriction on the said parcel of land.

For the foregoing reasons, the Respondents argued that the present Application is unmerited and ought to be dismissed with costs.

DETERMINATION

The key issue for determination remains whether the Applicant has made out a case to warrant the revocation of Grant of Letters of Administration made to the Respondents. 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 matter at hand, the Applicants key contention is that the Grant was obtained fraudulently in that the Respondents did not inform the Court that they were married and that she is an heir to the deceased's Estate. Does that warrant the revocation of the Grant as per the **Law of Succession Act**? My answer to that is in the negative. I hold so because **Section 66** of the **Law of Succession Act** outlines the persons who are to be given preference as administrators. It states that:

When a deceased has died intestate, the court shall, save as otherwise expressly provided, have a final discretion as to the person or persons to whom a grant of letters of administration shall, in the best interests of all concerned, be made, but shall, without prejudice to that discretion, accept as a general guide the following order of preference-

(a) Surviving spouse or spouses, with or without association of other beneficiaries;

(b) Other beneficiaries entitled on intestacy, with priority according to their respective beneficial

interests as provided by Part V;

(c) The Public Trustee; and

(d) Creditors:

Provided that, where there is partial intestacy, letters of administration in respect of the intestate estate shall be granted to any executor or executors who prove the will.

Part V of the **Law of Succession Act** governs intestacy and it is to the effect that where a deceased leaves no surviving spouse, the next in line are his children. In the circumstances therefore, the Respondents, being the deceased's children, were accorded the preference and entitlement of being the administrators of the deceased's Estate. The fact that the Applicant is a daughter-in-law of the deceased does not entitle her to be an administrator of the Estate and **Section 66** does not prioritize her as such. In any event, the evidence before the Court points to the conclusion that the Applicant was aware of the proceedings at the Limuru Court and she was also present at the family meeting where it was agreed that they all contribute towards the filing and prosecution of the suit. The Applicant has further not rebutted the assertions by one Jane Murugi, that she was present in Court when the Grant of Letters of Administration was issued.

On the other hand, this Court must remind litigants, such as the Applicant, that the status of individuals, whether married or not, does not in any way confer or take away their rights and entitlements under the law of succession. Marriage is not a determining factor when it comes to inheritance and as such, it is immaterial whether or not the Court that issued the Grant of Letters of Administration was informed about the status of the Respondents.

On that basis and reasoning, the Court finds no merit in the present Application for revocation of the Grant that had been issued and hence the same must fail.

In the circumstances however, it is uncontested that the Applicant was married to the deceased's son and hence she is the daughter-in-law to the deceased. Furthermore, it is also uncontested that she has been in occupation of the parcel of land known as L.R No. Muguga/Kanyariri/86 since 1971 together with her children. Being the wife to the deceased's son, it means that she is entitled to a share of her husband's entitlement, from the deceased's estate. In that regard therefore, and in the interest of justice, it is just and proper that the Confirmed Grant in question is amended in order for the Applicant to be apportioned the share of her husband from the estate.

Additionally, based on the evidence before the Court, John Kahenya, in his Witness Statement sworn on 4th November, 2009, admitted and it is uncontested that there was a family meeting held in which it was agreed that the said parcel of land be shared equally between the Parties herein and as such, the exclusion of the Applicant from her share to the property is unjustified.

DISPOSITION

Based on the above analysis and careful consideration of the evidence on record, the Court finds:

(1) The Summons Application for Revocation of Grant, dated 3rd July, 2009, unmerited and the same is hereby dismissed.

(2) The parcel of land known as L.R No. Muguga/Kanyari/86 to be shared equally among the following:

(a) Margaret Muthoni Kimani;

(b) Margaret Kahenya; and

(c) Joyce Njoki Kahenya.

(3) Let each Party bear its own costs.

DELIVERED, DATED AND SIGNED ON THIS 24TH DAY OF NOVEMBER 2016

M. W. MUIGAI

JUDGE

In the presence of:

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